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**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

ADAM RICHARDS, an individual;
 JEFFREY VANDERMEULEN, an
 individual; GERALD CLARK, an
 individual; JESSE HARRIS, an
 individual; ON TARGET INDOOR
 SHOOTING RANGE, LLC;
 GAALSWYK ENTERPRISES, INC.
 (D/B/A/ SMOKIN' BARREL
 FIREARMS); GUN OWNERS OF
 CALIFORNIA, INC.; GUN OWNERS OF
 AMERICA, INC.; GUN OWNERS
 FOUNDATION; CALIFORNIA RIFLE &
 PISTOL ASSOCIATION,
 INCORPORATED; and SECOND
 AMENDMENT FOUNDATION, a
 California Corporation,

Plaintiffs,

v.

GAVIN NEWSOM, in his official
 capacity as Governor of the State of
 California; ROBERT BONTA, in his
 official capacity as Attorney General of
 the State of California, and DOES 1-10,

Defendants.

Case No.: 8:23-cv-02413 JVS (KESx)

**AMENDED AND SUPPLEMENTAL
 COMPLAINT FOR DECLARATORY
 & INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 NOW COME Plaintiffs Adam Richards, Jeffrey Vandermeulen, Gerald Clark,
2 Jesse Harris, On Target Indoor Shooting Range, LLC, Gaalswyk Enterprises, Inc.
3 (D/B/A Smokin' Barrel Firearms), Gun Owners of California, Inc., Gun Owners of
4 America, Inc., Gun Owners Foundation, California Rifle & Pistol Association,
5 Incorporated, and The Second Amendment Foundation, and through their respective
6 counsel, bring this action against Defendant Attorney General Robert Bonta in his
7 official capacity, and make the following amended and supplemental allegations.

8 INTRODUCTION

9 1. Plaintiffs bring this suit to challenge the constitutionality of 2022 Cal.
10 Stat. ch. 995, codified at California Penal Code section 26806, as a result of the
11 passage of Senate Bill (“SB”) 1384 in 2022 (alternatively “section 26806”). Section
12 26806 violates the constitutional rights of Plaintiffs by imposing Orwellian tactics by
13 the state to view and overhear the private and confidential communications of anyone
14 who enters a gun shop, gun show property, or home of a home-based Federal Firearms
15 Licensee (“FFL”).

16 2. Not only does section 26806 violate the individual rights of those patrons,
17 customers, family members, friends, clients, and the FFLs themselves, but it also chills
18 the desire to exercise those rights for fear of being video and audio recorded in
19 communications and situations that are confidential in nature.

20 3. Section 26806 works to discourage persons who do not wish to abdicate
21 their First Amendment, Fourth Amendment, Fifth Amendment, and Fourteenth
22 Amendment rights from entering an FFL shop or private at-home FFL dealer space to
23 exercise their Second Amendment rights.

24 4. Section 26806 also mandates a government taking without just
25 compensation by commandeering space within the FFL businesses or homes for the
26 use of government tracking, and by forcing FFLs to purchase unwanted equipment to
27 carry out the government’s bidding on their private property. Section 26806 also forces
28 dealers who engage in sales at gun shows on rented premises (usually fairgrounds and

1 exhibit halls) to comply with section 26806 despite the fact that such dealers do not
2 own or control these temporary premises in a manner that would ever allow them to
3 comply, even if they could afford the costs for installing such systems for a weekend
4 show.

5 5. Finally, section 26806 requires the perpetual and unconstitutional
6 warrantless search of businesses and homes by 24-hour-per-day video and audio
7 recording. Such an intrusive, all-encompassing government trespass violates the
8 privacy of individuals in gun shops, gun shows, and the private homes of FFLs who
9 conduct business in their homes.

10 6. Section 26806 took effect on January 1, 2024, and since that time has
11 either forced licensees, including members of Plaintiffs' organizations, to cease dealing
12 in firearms, or has required them to spend tens of thousands of unreimbursed dollars to
13 install a Panopticon recording regime for the sole benefit of the government and third
14 parties.

15 7. Because section 26806 violates rights protected by the First Amendment,
16 Fourth Amendment, Fifth Amendment, and Fourteenth Amendment, Plaintiffs seek
17 equitable relief in declaring the law invalid and enjoining its enforcement by
18 Defendants, their employees, agents, successors in office, and all local and state law
19 enforcement, District Attorneys, County Counsel, and City Attorneys holding office in
20 the state of California, as well as their successors in office.

21 **JURISDICTION AND VENUE**

22 8. The Court has original jurisdiction of this civil action under 28 U.S.C. §
23 1331 because the action arises under the Constitution and laws of the United States,
24 thus raising federal questions. The Court also has jurisdiction under 28 U.S.C. §
25 1343(a)(3) and 42 U.S.C. § 1983 since this action seeks to redress the deprivation,
26 under color of the laws, statutes, ordinances, regulations, customs and usages of the
27 State of California and political subdivisions thereof, of rights, privileges or
28 immunities secured by the United States Constitution and by Acts of Congress.

1 Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§
2 2201 and 2202, respectively, and their claim for attorney's fees is authorized by 42
3 U.S.C. § 1988.

4 9. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a
5 substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in
6 this district. Further, the state of California maintains an office for service of process
7 on the Attorney General in Los Angeles County at 300 South Spring Street, Los
8 Angeles, California 90013-1230.

9 **PARTIES**

10 **Plaintiffs**

11 10. Plaintiff ADAM RICHARDS is a resident of El Dorado County,
12 California. Mr. Richards is a home-based FFL and an attorney that keeps a home office
13 at the same location where he conducts his FFL business. He was forced to become a
14 home-based FFL when the City of Sacramento (where his office is located) made the
15 permitting process so expensive that he could not afford to have the FFL located in the
16 same space as his law firm. Rather than waste thousands of dollars on permitting, Mr.
17 Richards chose to operate his FFL out of a separate structure at his residence. He has
18 been an FFL since approximately 2021. The separate structure where the FFL business
19 is conducted is also his home office where he works approximately 50% of his time on
20 his legal practice. This work includes telephone calls with clients, opposing counsel,
21 law enforcement and others. His family also frequently visits him in the mornings and
22 evenings in this office/FFL space, and having his young children recorded in
23 potentially a partial state of dress before bed and recording private conversations with
24 his children or spouse are greatly concerning to Mr. Richards. Should section 26806's
25 surveillance regime be allowed to continue, Mr. Richards will have to either stop being
26 an FFL or risk exposing his clients and family to privacy violations because of the
27 constant recording. Plaintiff Richards would continue his FFL business and his legal
28 business out of his home were it not for the intrusiveness of SB 1384, which will force

1 him to remove the FFL business from his home.

2 11. Plaintiff JEFFREY VANDERMEULEN is a resident of Amador County,
3 California. Mr. Vandermeulen is a retired police officer in good standing and an FFL.
4 Mr. Vandermeulen operates a retail sales firearm business and online firearm business,
5 named MountainHouse Firearms, where he sells firearms to customers both inside and
6 outside of California. MountainHouse Firearms is a locally owned business
7 specializing in the sale of new and used consignment handguns, rifles, shotguns and
8 accessories. Mr. Vandermeulen also operates a small aerial ash dispersal business out
9 of his home. Through the operation of his multiple enterprises, Mr. Vandermeulen
10 often has private conversations either with customers asking questions about firearm
11 ownership, firearm collections from their families, or conversations with those who are
12 seeking his services to have a loved one's ashes scattered. If Mr. Vandermeulen is
13 forced to record all these private conversations in his home office, his customers would
14 find this surveillance offensive, and he may lose business because of the requirement.
15 He would be forced to place a sign, where these customers could see it, stating that
16 they are being recorded, and he would have the expense of purchasing a commercial
17 security system for his small at-home business. Mr. Vandermeulen would also have
18 additional liability for recording people who have not given their consent to be
19 recorded. Mr. Vandermeulen would also be forced to focus a recording device directly
20 at his computer screen to capture online sales with his out-of-California customers,
21 thus sharing information directly and placing those customers in a situation where the
22 state of California is now monitoring their actions outside of the state as well and to
23 which they did not consent. The cost of implementing SB 1384 along with the added
24 liability and customer disapproval may force Plaintiff Vandermeulen to have to give up
25 his home FFL business.

26 12. Plaintiff GERALD CLARK is a resident of Orange County, California,
27 and he is an NRA-certified and CRPA-certified instructor. Mr. Clark is the Training
28 and Shooting Sports Director for CRPA. Mr. Clark regularly attends gun shows and

1 gun ranges and frequents gun shops. During Mr. Clark's visits to gun shows, ranges,
2 and gun shops where he purchases lawful firearms and ammunition, Mr. Clark has
3 discussions with the FFLs regarding the purchases, his personal information, and
4 discusses politics surrounding the requirements of those purchases. Mr. Clark updates
5 the FFLs on litigation and legislative issues the CRPA is championing. He has political
6 conversations with the FFLs that are private discussions about the current state of gun
7 control in California and what they can do to help protect the rights of the people. Mr.
8 Clark has taught gun safety and training courses for 12 years and teaches those courses
9 at gun shows, ranges, and gun shops. During the training courses, Mr. Clark talks to
10 others about their rights, the importance of membership in the CRPA, and the Second
11 Amendment and other constitutional rights. SB 1384 burdens Mr. Clark's right to
12 engage in otherwise lawful speech in places (FFL counters, closed classes, gun shows,
13 etc.) where he is discussing sensitive issues where he may now be constantly
14 monitored. SB 1384 also prevents Plaintiff Clark from freely communicating with
15 FFLs as to ongoing legal and legislative initiatives for fear of being recorded by the
16 government. The use of recording devices with 24-hour monitoring will chill his ability
17 to speak freely for fear of retribution by the government. But for Defendants' adoption
18 and enforcement of SB 1384, Plaintiff Clark would continue attending, informing,
19 teaching, and participating in gun shows and gun shop events.

20 13. Plaintiff JESSE HARRIS lives in Siskiyou County, California, and is an
21 FFL that operates out of his uncle's tire and tackle shop, where he leases a small space
22 to conduct firearm transfers. Mr. Harris is also a firearms trainer and a field
23 representative for the CRPA. The surveillance requirement of SB 1384 would impact
24 Mr. Harris by driving away customers who do not wish to have their exchanges with
25 Mr. Harris recorded. Mr. Harris has confidential conversations with his customers and
26 discusses many issues affecting gun owners in California. Mr. Harris also works for
27 CRPA as a Field Representative in Northern California and Mr. Harris is running for
28 office in 2024. Mr. Harris feels that his speech about gun control, his campaign, and

1 the current politics of California may be chilled because he will constantly have to
2 wonder if the California Department of Justice (“CA DOJ”) is listening in. Mr. Harris
3 also knows that the owner of the shop has confidential conversations with his attorney
4 in the shop and has non-gun customers that frequent the premises. All of the attorney
5 conversations and the tire and tackle customers who are not buying firearms would be
6 subject to recording 24 hours per day just because Mr. Harris has a small section of the
7 store that he leases. The requirements under SB 1384 are cost prohibitive to Mr. Harris
8 and since it is a leased space, he does not have the ability to transform his uncle’s store
9 so that he can meet the requirements in SB 1384. If SB 1384 is enforced against Mr.
10 Harris, it would ruin his small business (both financially and because customers will
11 not want to be recorded) and would cause him to have to stop being an FFL.

12 14. Plaintiff ON TARGET INDOOR RANGE (“On Target”) is a for-profit
13 brick-and-mortar gun shop and indoor shooting range located in Laguna Niguel,
14 California. On Target specializes in firearms sales (in-store and e-sales), firearms
15 transfers, ammunition sales, and training classes. As an FFL, On Target has
16 confidential conversations with customers regarding their firearm and safety needs,
17 about what type of training they need for their individualized situation, state and
18 federal laws, and how they can be a part of changing those laws by joining groups like
19 CRPA. On Target offers many training opportunities for new gun owners and is
20 specially geared towards women and their unique shooting needs. Twice per month,
21 On Target hosts interesting and informative discussion sessions with gun owners which
22 would be completely recorded under SB 1384. The recording of these sessions would
23 make gun owners less open to asking questions and less likely to attend for fear of the
24 government watching and listening. SB 1384 would also open up Plaintiff On Target to
25 additional liability for recording people who enter the premises without giving their
26 consent to the recording. Plaintiff On Target would also be harmed by being forced to
27 purchase costly commercial recording equipment to meet the requirements and to store
28 the recordings for one full year.

1 15. Plaintiff GAALSWYK ENTERPRISES, INC (D/B/A “SMOKIN'
2 BARREL FIREARMS”) is a brick-and-mortar FFL shop in Visalia, California.
3 Smokin' Barrel Firearms operates a 1300-square-foot location, which would require 5
4 cameras plus the hardware to record 24 hours per day (even when they are not open
5 and transacting). Smokin' Barrel Firearms is a family-based business and the estimated
6 \$5,000 to \$12,000 in order to comply with SB 1384 would be very challenging for
7 them to pay. Smokin' Barrel Firearms handles the sale of firearms, transfers of
8 firearms, layaways, consignment and e-transfers. Smokin' Barrel Firearms has
9 confidential conversations with customers regarding their self-defense needs as well as
10 collecting confidential and personal information in the transactions they conduct.
11 Smokin' Barrel Firearms would also be forced to place a recording device directly at its
12 computer screen to capture online sales with out-of-California customers, thus sharing
13 information directly and placing those customers in a situation where the state of
14 California is now monitoring their actions outside of the state as well and to which they
15 did not consent. This would also create a “gun registry” that the CA DOJ could access
16 any time they wanted to do so. They and their customers and students would be
17 harmed by being forced to produce those recordings to the CA DOJ on demand as well
18 as harmed by the fact that those recordings could be open to subpoena in civil and
19 criminal matters. Plaintiff Smokin' Barrel Firearms would also have additional liability
20 for recording persons who have not given their consent to be recorded. SB 1384 is too
21 large of a burden for Plaintiff Smokin' Barrel Firearms and its customers.

22 16. Plaintiff GUN OWNERS OF CALIFORNIA, INC. (“GOC”) is a
23 nonprofit organization incorporated under the laws of the state of California, with
24 headquarters in El Dorado Hills, California. GOC is dedicated to the restoration of the
25 Second Amendment in California. To that end, GOC and its members frequent FFL
26 shops and gun shows and discuss issues pertaining to legal and political issues with the
27 FFLs to make sure they are aware of compliance issues and upcoming legislative
28 changes. These conversations are not meant for the general public or the prying ear of

1 the government. GOC members often discuss these issues along with protection
2 measures for their homes, families, and businesses with FFLs and those conversations
3 are meant to be confidential and not public. GOC makes its publications and other
4 materials available for prospective members and the general public in gun stores across
5 California. Through this lawsuit, GOC represents not only its own interests as an entity
6 that may discuss topics meant to be between GOC and gun dealers and their customers,
7 but also the interests of its members as those who enter and transact business and
8 conversations in a store or gun show where recording of those confidential
9 conversations would take place. GOC and its members are supporters of the right to
10 keep and bear arms for lawful purposes.

11 17. Plaintiff GUN OWNERS OF AMERICA, INC. (“GOA”) is a California
12 non-stock corporation and a not-for-profit membership organization with its principal
13 place of business in Springfield, Virginia, and is organized and operated as a non-profit
14 membership organization that is exempt from federal income taxes under § 501(c)(4)
15 of the Internal Revenue Code. GOA was formed in 1976 to preserve and defend the
16 Second Amendment rights of gun owners. GOA has more than 2 million members and
17 supporters across the country, including residents within this judicial district and
18 throughout the State of California. GOA members and supporters who patronize gun
19 shops and gun shows are damaged by SB 1384 because of the numerous infringements
20 on their constitutional rights. GOA makes its publications and educational materials
21 available for prospective members and the general public in gun stores across
22 California. GOA members and the general public seek out these materials and engage
23 with gun stores and GOA about the information that is provided. GOA thus brings this
24 challenge not only on behalf of itself as an organization (as section 26806 harms
25 GOA’s ability to spread its message, reach new members, and raise funds to perform
26 its critical mission), but also on behalf of its members and supporters including gun
27 stores, home-based dealers, and customers of the same, all of whom are directly
28 harmed by section 26806’s provisions.

1 18. Plaintiff GUN OWNERS FOUNDATION (“GOF”) is a Virginia non-
2 stock corporation with its principal place of business in Springfield, Virginia. GOF was
3 formed in 1983 and is organized and operated as a nonprofit legal defense and
4 educational foundation that is exempt from federal income taxes under § 501(c)(3) of
5 the Internal Revenue Code. GOF is supported by gun owners across the country and
6 within this district. GOF’s supporters include those who shop at California’s gun
7 stores.

8 19. Plaintiff CALIFORNIA RIFLE & PISTOL ASSOCIATION,
9 INCORPORATED (“CRPA”) is a nonprofit membership organization incorporated
10 under the laws of California, with headquarters in Fullerton, California. Among its
11 other activities, CRPA works to preserve and expand constitutional and statutory rights
12 of gun ownership, including the right to self-defense and the right to keep and bear
13 arms. CRPA accomplishes this through its educational offerings, publications, member
14 engagement events, and legislative advocacy and initiatives. CRPA has over 500
15 business affiliates that they work with across the state, many of which are Federal
16 Firearms Licensees. CRPA enters these Business Affiliate premises to conduct
17 business, update the businesses on news and information, and to discuss important
18 political and legal challenges in the state. CRPA also has trainers in some of these
19 locations that host classes for members and non-member gun owners. CRPA trainers,
20 members, and class participants would be open to privacy violations of having their
21 discussions recorded that have nothing to do with a gun purchase just because they are
22 having them in a store where firearms transactions occur. What’s more, CRPA has tens
23 of thousands of members and supporters, many of whom (including Plaintiffs Gerald
24 Clark, Jesse Harris, and Adam Richards) frequent gun stores and gun shows to engage
25 in lawful purchases, expressive activities with like-minded people, including
26 discussions related to firearms, ammunition, accessories, the shooting sports, politics,
27 and the Second Amendment. Recording conversations that are private and confidential
28 and deal with the protection of self and family may be a deterrent to some walking into

1 a store to conduct these activities. Through this lawsuit, CRPA represents not only its
2 own interests as an entity that may discuss other topics meant to be between CRPA and
3 its Business Affiliate only but also the interests of its members as those who enter and
4 transact business and conversations in a store or gun show where recording of those
5 confidential conversations would take place. CRPA and its members are supporters of
6 the right to keep and bear arms for lawful purposes.

7 20. Plaintiff THE SECOND AMENDMENT FOUNDATION (“SAF”) is a
8 non-profit membership organization. It is incorporated under the laws of the state of
9 Washington and was founded in 1974. SAF has over 720,000 members and supporters
10 nationwide, including thousands of members in California. SAF is dedicated to
11 promoting a better understanding of our constitutional heritage to privately own and
12 possess firearms through educational and legal action programs designed to better
13 inform the public about gun control issues. SAF has been a pioneer and an innovator in
14 the defense of the right to keep and bear arms, through its publications and public
15 education programs like the Gun Rights Policy Conference. SAF also expends
16 significant sums of money sponsoring public interest litigation to defend its own
17 interests and the interests of its members and supporters. It is critical to the success of
18 SAF that its promotional material, publications, and messages about the “right to keep
19 and bear arms” reach demographic groups that are saturated with gun owners, gun
20 buyers, and people of the “gun culture.” It is also crucial that SAF be able to
21 communicate with gun owners in gun stores or at gun shows about political issues,
22 legal cases, firearms and ammunition purchases, etc., without the fear of having every
23 word collected by the government. SAF brings this action on behalf of itself and its
24 members and supporters in California, including Federal Firearms Licensees (those
25 with a storefront and those who operate from their homes) and customers of the same.

26 **Defendants**

27 21. Defendant ROBERT BONTA is the Attorney General of the State of
28 California. He is the “chief law officer” of the state and has the duty to “see that the

1 laws of the State are uniformly and adequately enforced.” Cal. Const. art. 5, § 1.

2 22. Additionally, Defendant Bonta has “direct supervision over every district
3 attorney” within the State. *Id.* If, at any point a district attorney of the State fails to
4 enforce adequately “any law of the State,” Defendant Bonta “prosecute[s] any
5 violations of the law.” *Id.* Finally, Defendant Bonta, as Attorney General of the State
6 of California, “shall assist any district attorney in the discharge” of duties when
7 “required by the public interest or directed by the Governor. . . .” *Id.*

8 23. The injunctive and declaratory relief portions of this suit are brought
9 against Defendant Bonta in his official capacity.

10 24. The true names and capacities of Defendants named as DOES 1 through
11 10, inclusive, are individual, corporate, associate, or otherwise, and are unknown to
12 Plaintiffs. They are, however, believed to be responsible in some way for Plaintiffs’
13 loss and damages. Each Doe Defendant is, and at all times mentioned here was, a
14 partner, agent, principal, co-conspirator, or is otherwise vicariously or directly
15 responsible for the acts or omissions of the other defendants or themselves.

16 They are each sued individually and are joined as party defendants. Plaintiffs
17 thus sue each Doe Defendant under Rules 15 and 21 of the Federal Rules of Civil
18 Procedure. Plaintiffs are informed and believe that the Doe Defendants are all
19 California residents. Plaintiffs will amend this complaint to show such true names and
20 capacities of Doe Defendants when they have been ascertained.

21 **FACTUAL ALLEGATIONS**

22 **Regulations of Brick-and-Mortar Gun Shops in California**

23 25. California law requires that essentially all transfers of firearms be done
24 through a Federal Firearms Licensee retailer (“FFL”), including transfers between
25 private parties, gun show sales, gifts, loans, and pawned or consigned weapon
26 redemptions. Prospective firearm purchasers must submit an application to the FFL,
27 who provides purchaser information to CA DOJ through electronic transfer. CA DOJ
28 then checks state and federal records to determine whether the applicant is legally

1 disqualified from purchasing or possessing firearms under state or federal law. The
2 Dealer Record of Sale (“DROS”) system’s records include the prospective purchaser
3 information (name, date of birth, sex, race/ethnicity, address); date and time of
4 transaction; the type of transaction (e.g., sale, denial, transfer, pawn); and identifiers
5 for the seller.

6 26. Federal law requires all persons who intend to engage in a business
7 involving the sale, manufacture, or importation of firearms to apply for and obtain an
8 FFL. *See* 18 U.S.C. § 922(a). To obtain an FFL, a person must be at least 21 years of
9 age, not be prohibited from owning or possessing firearms, not have willfully violated
10 the federal Gun Control Act (“GCA”) or its regulations, not have willfully failed to
11 disclose material information or made any false statements on their application, and
12 have a premises for conducting business. *See* 18 U.S.C. § 923(d)(1); 27 C.F.R.
13 § 478.47(b).

14 27. FFL applicants must also certify their business will not be prohibited by
15 state or local law where the premises are located, will comply with all state and local
16 laws applicable to the conduct of the business, that no business will be conducted until
17 all applicable state and local laws have been met, that they have notified their local law
18 enforcement of their intent to apply for a license, and if seeking to operate as a dealer
19 that secure gun storage or safety devices will be available at any place where firearms
20 are sold. *Id.*

21 28. In California, no person may sell, lease, or transfer firearms unless they
22 obtain a state-issued license. Cal. Penal Code § 26500 (West 2024). To obtain such a
23 license, a person must have a valid FFL, have a regulatory or business license required
24 by local government, have a valid seller’s permit issued by the State Board of
25 Equalization, have a certificate of eligibility issued by the CA DOJ, have any required
26 local business license that states on its face “Valid for Retail Sales of Firearms” and is
27 endorsed by the signature of the issuing authority, and be listed in the CA DOJ’s
28 centralized list of firearm dealers in the state. Cal. Penal Code § 26700 (West 2024).

1 29. California Cities and Counties are generally free to impose additional
2 licensing requirements beyond that required under state and federal law. *See* Cal. Penal
3 Code § 26705(a) (West 2024) (stating “duly constituted licensing authority of a city
4 [or] county . . . shall accept applications for, and may grant licenses. . . .”). For
5 example, the City of San José prohibits persons from selling, leasing, or otherwise
6 transferring firearms without first having obtained a Firearm Business License from the
7 Chief of Police. *See* San José, Cal., Mun. Code § 6.90.090 (2024).

8 30. Any individual applying for a license with the City of San José must also
9 complete a personal history questionnaire, be fingerprinted at a location approved by
10 the San José Police Department, be photographed and interviewed, sign an
11 authorization for release of records and information that the Chief of Police considers
12 necessary for a complete investigation, and be at least 21 years of age. *See* San José,
13 Cal., Mun. Code § 6.90.210(B) (2024).

14 31. Federal law requires all firearm acquisition and disposition (“A&D”)
15 records to be recorded in a logbook, commonly referred to as a “bound book,” which is
16 an orderly arrangement of loose-leaf pages maintained at the business premises in a
17 format prescribed in federal regulations and numbered consecutively. *See* 18 U.S.C.
18 § 923(g)(1)(A); 27 C.F.R. §§ 478.121, 478.125.

19 32. Licensed dealers are required to record the acquisitions of a firearm in
20 their bound book no later than the close of next business day, and no later than 7 days
21 for dispositions. *See* 18 U.S.C. § 923(g)(1)(A); 27 C.F.R. § 478.125.

22 33. The sale or transfer of any firearm by a licensed dealer to an individual
23 requires both the FFL and individual to jointly complete ATF Form 4473. *See* 27
24 C.F.R. § 478.124. The information contained in ATF Form 4473 is used by the FFL to
25 ensure the individual’s eligibility and to process the required federal background check
26 through the National Instant Criminal Background Check System (“NICS”). *See* 18
27 U.S.C. § 922(t); 27 C.F.R. § 478.102. Generally, completed 4473 forms are retained by
28 the FFL at its business premises indefinitely while the business remains in operation.

1 *See* 18 U.S.C. § 923(g)(1)(A); 27 C.F.R. § 478.129(b).

2 34. California is one of 13 full point of contact (“POC”) states, meaning CA
3 DOJ is designated to conduct firearm background checks for FFLs in California in lieu
4 of the FFL transmitting the information contained in ATF Form 4473 to NICS directly.
5 To process the required background check, California FFLs are instead required to
6 submit a Dealer Record of Sale (“DROS”) through a web-based application known as
7 the DROS Entry System (“DES”). Regardless, California FFLs must still complete and
8 maintain ATF Form 4473 for all firearm transactions. California FFLs are then
9 required to print and retain a copy of the DROS paperwork in consecutive order with
10 the required ATF Form 4473. *See* Cal. Penal Code § 28215 (West 2024).

11 35. Local jurisdictions in California may also impose additional
12 recordkeeping requirements.

13 36. To ensure compliance with all licensing and recordkeeping requirements,
14 federal law requires FFLs to allow ATF officers to enter during business hours,
15 including places of storage, for purposes of inspecting or examining the records,
16 documents, ammunition, and firearms. *See* 27 C.F.R. § 478.23(b). ATF officers may
17 conduct such inspections for insuring compliance with the recordkeeping requirements
18 every 12 months, during a reasonable inquiry, during a criminal investigation of a
19 person or persons other than the FFL, or when such inspections may be required for
20 determining the disposition of one or more firearms during a bona fide criminal
21 investigation. *Id.*

22 37. Similarly, California law allows CA DOJ to conduct inspections of FFLs
23 at least once every three years to ensure compliance with California firearm laws. *See*
24 Cal. Penal Code §§ 26720, 28480 (West 2024). During such inspections, the FFLs
25 bound book, DROS verification numbers, and any other records requested by CA DOJ
26 must be made available for review. *See id.*, § 26480(c). CA DOJ is required to audit a
27 sampling of at least 25 percent but no more than 50 percent of each record type. *See*
28 *id.*, § 26720(a)(2). FFLs are also required to pay an annual fee to cover the cost of this

1 inspection (\$115). *See id.*, § 26720(b).

2 38. Local jurisdictions are free to adopt their own inspection program to
 3 ensure compliance with firearms laws. As noted above, the City of San José imposes
 4 its own local ordinances regarding FFL inspections. *See* San José, Cal., Mun. Code
 5 § 6.90.340 (2024). In addition, San José requires FFLs to conduct a physical inventory
 6 check and report its findings to the Chief of Police in the form of a signed affidavit
 7 under penalty of perjury. *See id.*, § 6.90.350 (2024).

8 39. FFL dealers who do not comply with these requirements are in violation
 9 and may be fined or, worse, not allowed to continue conducting business (or even
 10 criminally charged). Most FFLs take these requirements very seriously, as this is their
 11 livelihood.

12 **Gun Shows and Gun Shops Are a Cultural and Associative Experience**

13 40. Gun shows are a modern bazaar—a convention of like-minded individuals
 14 who meet in this unique public forum that has been set aside by state and local
 15 governments for all manner of commerce. This convention-like setting is of
 16 incalculable benefit to the gun-buying consumer and promotes public safety.

17 41. Gun shops provide a connection amongst like-minded individuals who
 18 come to the shop—in addition to acquiring Second Amendment protected “arms”—to
 19 discuss their rights and their needs for protection, the current laws of California, and
 20 political issues that may limit what they are able to acquire.

21 42. Gun shows and gun shops, in general, are a celebration of America’s “gun
 22 culture” that is a natural and essential outgrowth of the constitutional rights that flow
 23 from the Second Amendment to the United States Constitution.

24 43. Gun shows and gun shops are places where parents can learn to protect
 25 their families and their homes, and how to stay in compliance with California’s ever-
 26 changing gun laws.

27 44. Gun shows, in particular, are held and promoted, and considerable
 28 investment is made, precisely to promote and “normalize” the “gun culture” and the

1 constitutional principles that gun show participants hold dear. Gun show venues are
 2 used by many different public groups and constitute major event venues for large
 3 gatherings of people to engage in expressive activities, including concerts, festivals,
 4 and industry shows. Affixing permanent cameras that record 24 hours per day would
 5 be a violation of not just gun owners' rights to not have the government spy on
 6 personal conversations but would broadly affect any other groups using the same
 7 venues.

8 45. The government spying on people, especially in a place where expressive
 9 activity occurs so frequently, is wholly inconsistent with our country's founding
 10 principles.

11 **Impacts of SB 1384 Implementation on FFL Businesses**

12 46. The California Legislature, and particularly SB 1384 sponsor Senator
 13 Min, have made a big business of anti-gun legislation that they say will stop gun
 14 violence in California, sponsoring and passing multiple gun control laws each
 15 legislative session that are repeatedly challenged and overturned in the courts.

16 47. SB 1384, which added section 26806 to the California Penal Code,
 17 requires every licensed firearm dealer to have a digital audio/video surveillance system
 18 on their "business" premises:

19 (a) Commencing January 1, 2024, a licensee shall ensure that its business
 20 premises are monitored by a digital video surveillance system that meets
 all of the following requirements:

- 21 (1) The system shall clearly record images and, for systems located
 22 inside the premises, audio, of the area under surveillance.
- 23 (2) Each camera shall be permanently mounted in a fixed location.
 Cameras shall be placed in locations that allow the camera to
 24 clearly record activity occurring in all areas described in paragraph
 (3) and reasonably produce recordings that allow for the clear
 25 identification of any person.
- 26 (3) The areas recorded shall include, without limitation, all of the
 following:
 - 27 (A) Interior views of all entries or exits to the premises.
 - 28 (B) All areas where firearms are displayed.

(C) All points of sale, sufficient to identify the parties involved in the transaction.

(4) The system shall continuously record 24 hours per day at a frame rate no less than 15 frames per second.

(5) The media or device on which recordings are stored shall be secured in a manner to protect the recording from tampering, unauthorized access or use, or theft.

(6) Recordings shall be maintained for a minimum of one year.

(7) Recorded images shall clearly and accurately display the date and time.

(8) The system shall be equipped with a failure notification system that provides notification to the licensee of any interruption or failure of the system or storage device.

Cal. Penal Code § 26806(a) (West 2024).

48. The information collected by the FFL shall not be used, shared, or accessed except as specified as follows:

(1) A licensee shall allow access to the system to an agent of the department or a licensing authority conducting an inspection of the licensee's premises, for the purpose of inspecting the system for compliance with this section, and only if a warrant or court order would not generally be required for that access.

(2) A licensee shall allow access to the system or release recordings to any person pursuant to search warrant or other court order.

(3) A licensee may allow access to the system or release recordings to any person in response to an insurance claim or as part of the civil discovery process, including, but not limited to, in response to subpoenas, request for production or inspection, or other court order.

Cal. Penal Code § 26806(b).

49. The FFL "shall post a sign in a conspicuous place at each entrance to the premises that states in block letters not less than one inch in height" the following:

"THESE PREMISES ARE UNDER VIDEO AND AUDIO SURVEILLANCE. YOUR IMAGE AND CONVERSATIONS MAY BE RECORDED." Cal. Penal Code § 26806(c).

50. A licensee shall, on an annual basis, provide certification to the

1 department, in a manner prescribed by the department, that its video surveillance
2 system is in proper working order. Cal. Penal Code § 26806(d).

3 51. Recently, the Bureau of Alcohol, Tobacco, Firearms, and Explosives
4 promulgated a Notice of Proposed Rulemaking designed to vastly increase the number
5 of federally licensed gun dealers, who are also regulated by California, including under
6 section 26806. *See* Final Rule: Definition of “Engaged in the Business” as a Dealer in
7 Firearms, Definition 8, 2023 (Sept. 7, 2023) (to be codified at 27 C.F.R. pt. 478)
8 <https://www.regulations.gov/document/ATF-2023-0002-0001> (last visited June 18,
9 2024). ATF estimates that the net effect of its proposed rule will be that a minimum of
10 *hundreds of thousands* of Americans must become licensed dealers, even if only to sell
11 a few personally owned firearms. *Id.* at 62009. ATF further estimates that most of
12 these new “dealers” will operate out of their homes. *See id.* Thus, the sum total of
13 section 26806 and this proposed federal rulemaking will be that many thousands more
14 gun-owning households will be under 24/7 audiovisual surveillance by California.

15 **Section 26806 Has No Impact on Preventing Crime**

16 52. One of the ostensible purposes of section 26806 was to stop criminal
17 activity that supposedly takes place in gun stores such as theft of firearms and straw
18 purchases.

19 53. Admittedly, many gun shops already have some form of security camera
20 to help deal with break ins and the like that may occur in stores. Just like every other
21 retail store in California, the incidence of retail theft is real. And just like every other
22 type of retail store in California that has video security, crime is not deterred by these
23 security systems or by even having security personnel in the stores. Most security
24 cameras are there for loss and insurance purposes, not to catch criminals.

25 54. The authors of SB 1386 note that “the rate of gun store thefts seems to
26 have tapered slightly in recent years”¹ while retail theft across the board has increased

27 _____
28 ¹ S. Comm. on Pub. Safety hearing on S. Bill 1384, at 7 (Cal. Apr. 19, 2022),
https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB

1 in California.^{2,3}

2 55. Yet, with all of the retail crime on the rise in California, FFLs are the only
3 ones being forced to set up costly government surveillance systems while
4 simultaneously being the industry experiencing less crime in recent years according to
5 SB 1384's author.

6 **The First Amendment Right to Free Speech, Association, Anonymity & Assembly**

7 56. The First Amendment to the U.S. Constitution provides that "Congress
8 shall make no law respecting an establishment of religion or prohibiting the free
9 exercise thereof; or abridging the freedom of speech, or of the press; or the right of the
10 people peaceably to assemble, and to petition the government for a redress of
11 grievances." The Fourteenth Amendment incorporates these protections against the
12 states through its Due Process Clause.

13 **Section 26806 Violates Almost Every One of the Enumerated**

14 **First Amendment Rights.**

15 57. First, section 26806 mounts a malicious attack on the freedom of
16 association and second, violates the right to remain anonymous. *Antonyuk v.*
17 *Chiumento*, 2023 WL 8518003, at *37 (2d Cir. Dec. 8, 2023) ("It is uncontroversial
18 that the First Amendment protects the right to speak anonymously.").

19 58. When engaging in protected speech—imposing a dystopian surveillance
20 mandate that chills not just speech that is favorable of the Second Amendment but also
21 quintessential political speech that is critical of California's draconian gun control
22

23 1384# (last visited June 18, 2024). A copy is attached to the original Complaint, ECF
24 No. 1-1.

25 ² Magnus Lofstrom & Brandon Martin, *Retail Theft and Robbery Rates Have*
26 *Risen Across California*, Pub. Pol'y Inst. of Cal. (Sept. 7, 2023),
<https://www.ppic.org/blog/retail-theft-and-robbery-rates-have-risen-across-california/>
(last visited June 18, 2024).

27 ³ Lee Ohanian, *Why Shoplifting is Now De Facto Legal in California*, Hoover
28 Inst. (Aug. 3, 2021), <https://www.hoover.org/research/why-shoplifting-now-de-facto-legal-california> (last visited June 18, 2024).

1 regime, arguably the most severe outlier of any state in the nation.

2 59. Fourth, in something of a pièce de résistance, residential FFLs who
3 lawfully sell firearms out of their homes face an Orwellian-level “telescreen” invasion
4 of their privacy and *elimination of virtually all First Amendment freedoms in their own*
5 *homes* with the “all knowing eye” of the government peering in.

6 60. Fifth and finally, section 26806 also is not content-neutral, but rather
7 constitutes a blatant viewpoint discrimination as only those supporters of the Second
8 Amendment (i.e., gun owners and gun dealers) are subjected to section 26806’s
9 onerous restrictions. No other industry in California is mandated to record video and
10 audio of all activities, for all people coming and going, and all conversations 24 hours
11 a day.

12 61. Section 26806 is patently violative of the First Amendment for any one of
13 these reasons. But taken together, these compounded issues expose a grotesquely
14 unconstitutional law that warrants the swiftest and most emphatic corrective action.

15 **Section 26806 Decimates Freedom of Association**

16 62. Contrary to section 26806’s unprecedented surveillance mandate, the
17 Supreme Court has long held that “the right of individuals to associate for the
18 advancement of political beliefs” ranks “among our most precious freedoms” and “is
19 protected by the First Amendment.” *Williams v. Rhodes*, 393 U.S. 23, 30 (1968).

20 63. Attacks on constitutional rights are, unfortunately, nothing new in this
21 country. But the Second Amendment right to keep and bear arms has been subject to
22 an assault perhaps unparalleled in scope and duration.

23 64. As then-Arkansas Attorney General Leslie Rutledge noted in 2020, the
24 Second Amendment is constantly “under assault.”⁴ Others have observed that “[t]he
25

26
27 ⁴ Leslie Rutledge, *Guns, the NRA and the Second Amendment Are Under Assault*
28 *from the Left*, NBC News (Aug. 21, 2020),
<https://www.nbcnews.com/think/opinion/guns-nra-second-amendment-are-under-assault-left-ncna1237712> (last visited June 18, 2024).

1 Second Amendment is the most attacked right,”⁵ so much so that the Supreme Court
 2 has had to warn openly hostile lower courts that the Second Amendment “is not ‘a
 3 second-class right, subject to an entirely different body of rules than the other Bill of
 4 Rights guarantees.’” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2156
 5 (2022). And yet, retired Supreme Court Justice John Paul Stevens has even called for a
 6 total repeal of the Second Amendment⁶.

7 65. The volume and duration of the attacks on this right have, of course, also
 8 engendered the creation of Second Amendment associations, such as Plaintiff Gun
 9 Owners of America which, in addition to providing educational materials to the public
 10 and litigating to preserve constitutional rights, also engages in lobbying, advocacy, and
 11 even endorsement of candidates for political office who support the Second
 12 Amendment.

13 66. But attacks on the constitutional right to keep and bear arms inevitably
 14 involve attacks on other constitutional rights as well. For example, Plaintiff GOA has
 15 filed briefs in numerous Fourth Amendment cases,⁷ because the freedom from
 16 unreasonable searches and seizures often results in confluence with Second
 17 Amendment-protected keeping and bearing of arms. Similarly, firearms-related
 18 activities have long engendered First Amendment-protected free associations of
 19 citizens for related (and unrelated) purposes, such as during hunting, target shooting,
 20 self-defense training, and gun collecting.

21
 22 ⁵ Heather Smith, *Second Amendment: What Are the Facts?*, Jews for the Pres. of
 23 Firearms Ownership (Oct. 19, 2020), https://jpfo.org/articles-2020/2a-what-are-facts.htm?awt_a=A4_P (last visited June 18, 2024).

24 ⁶ Ellis Kim, *How Difficult Would It Be to Repeal the Second Amendment?*, PBS
 25 (Mar. 27, 2018), <https://www.pbs.org/newshour/nation/how-difficult-would-it-be-to-repeal-the-second-amendment> (last visited June 18, 2024).

26 ⁷ See, e.g., Brief for Gun Owners of America, Inc., et al. as Amicus Curiae in
 27 Supp. of Pet., *Torcivia v. Suffolk Cnty.*, NY, 143, S. Ct. 438 (2022) (No. 21-1522),
 28 <https://www.lawandfreedom.com/wordpress/wp-content/uploads/2022/07/Torcivia-Amicus-Brief.pdf> (last visited June 18, 2024).

1 67. Inextricably linked to the right to keep and bear arms is the First
2 Amendment's protection of the freedom of association, which section 26806 chills
3 severely.

4 68. California has made no secret of its open declaration of war on the Second
5 Amendment and the right to keep and bear arms. In an echo of former Justice Stevens,
6 Governor Gavin Newsom has issued a press release calling for a "28th Amendment" to
7 ban millions of commonly owned semiautomatic rifles.⁸ Joining this initiative, State
8 Senator Aisha Wahab called support of the Second Amendment a "gun fetish culture."
9 *Id.* And if California's hostility to the Bill of Rights was not yet clear, the Governor
10 has even proposed to double taxes on firearms and ammunition, comparing such a
11 measure to a "sin tax."⁹

12 69. In California's political climate, given the outward animus towards gun
13 owners, it is probable (if not certain) that, in stores where customers gather to purchase
14 firearms and ammunition, one will hear statements and conversations among like-
15 minded individuals criticizing the Governor and the Attorney General or other
16 powerful California politicians who openly oppose the right to keep and bear arms.

17 70. Yet should section 26806 be permitted to take effect, those conversations
18 will now be recorded and accessible to government investigators (by the same
19 department that makes determinations as to who may carry a firearm). Such intrusive
20 surveillance into the realm of political discourse invariably will have a chilling effect
21 on the associational rights of those who wish to gather and discuss the Second
22 Amendment or criticize the politicians who oppose it.

23
24 ⁸ *Governor Newsom Proposes Historic 28th Amendment to the United States*
25 *Constitution to End America's Gun Violence Crisis*, Off. of Gov. Gavin Newsom (June
26 8, 2023), <https://www.gov.ca.gov/2023/06/08/28th-amendment/> (last visited June 18,
27 2024).

28 ⁹ Emma Colton, *NRA Slams Newsom's 'Sin Tax' Comments on Gun Law amid Spiraling Crime: Ignoring Criminals*, Fox News (Sept. 27, 2023),
<https://www.foxnews.com/politics/nra-slams-newsoms-sin-tax-comments-gun-law-spiraling-crime-ignoring-criminals> (last visited June 18, 2024).

71. Unfortunately, this chilling effect on association is not speculative. Eight years ago, High Bridge Arms, the last gun store in San Francisco, closed its doors, strong-armed out of business by city ordinances nearly identical to section 26806: “The store announced on Facebook that it would close for ‘a variety of reasons’ – among them, gun regulations in San Francisco. Specifically, new measures the city is currently considering would require the store to videotape gun purchases and report ammunition sales to the police ... regulations[] which have already upset customers. ‘We’re getting phone calls: So, if I buy a box of bullets from you, are you going to report us to the police department?’”¹⁰

72. It is no coincidence that the Supreme Court recently has had to remind California that “implicit in the right to engage in activities protected by the First Amendment [is] a corresponding right to associate with others.” *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2382 (2021). That “[p]rotected association furthers ‘a wide variety of political, social, economic, educational, religious, and cultural ends,’ and ‘is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority.’” *Id.* (emphasis added).

73. Moreover, the “compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action.” *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958).

74. For example, as discussed in the declarations of Sam Paredes and Richard Minnich, Plaintiffs GOC and CRPA distribute the organizations’ literature, including fliers, newsletters, and membership applications, to hundreds of gun stores across California. *See* Decl. of Samuel A. Paredes in Supp. of original Compl., ECF No. 1-8,

¹⁰ Sam Harnett, *San Francisco’s Last Gun Shop Calls It Quits*, NPR (Oct. 27, 2015), <https://www.npr.org/2015/10/27/451202615/san-franciscos-last-gun-shop-calls-it-quits> (last visited June 18, 2024).

¶¶ 8-12; Decl. of Richard Minnich in Support of original Compl., ECF No. 1-9, ¶¶ 5-9.¹¹ The dealers typically are thankful to receive the material, because patrons frequently visit their stores not only to purchase firearms, but also to discuss firearms-related issues. *See* Paredes Decl., ¶ 8; Minnich Decl., ¶ 6. The GOC and CRPA materials thus provide a convenient way for gun stores to provide relevant literature to inquiring customers. *See* Paredes Decl., ¶ 8; Minnich Decl., ¶ 6. Oftentimes, this distribution leads to discussion about Second Amendment issues and to new GOC and CRPA members joining at their local gun store. *See* Paredes Decl., ¶ 8; Minnich Decl., ¶ 6. Many GOC and CRPA members report having initially obtained information about GOC and CRPA from their local gun store. *See* Paredes Decl., ¶ 8; Minnich Decl., ¶ 6. Plaintiffs Clark and Harris oftentimes leave this literature and talk to the FFLs in the stores about the politics of gun control in the state. *See* Clark Decl., ¶ 7; Harris Decl., ¶ 5.

75. Similarly, as discussed in the declaration of Erich Pratt, Plaintiff GOA maintains a “Caliber Club,” a “partnership program” comprised of more than five thousand gun stores and shooting ranges across the country, many of which are in California. GOA distributes various literature, brochures, patches, stickers, newsletters, and other items to its Caliber Club members, who make those items available for interested customers. This distribution leads to literature about events of concern to GOA and its members being disseminated widely, and also leads to the acquisition of new members and supporters. CRPA and SAF have similar programs working closely with FFLs across the state.

76. Section 26806 would surveil, monitor, and record all of this quintessential First Amendment speech about Second Amendment rights, which is generally politically unpopular in California. Knowing they are under constant government surveillance, gun store patrons will be less likely to speak their minds and to seek out

¹¹ In lieu of relodging these declarations, which are unchanged from their prior iterations, they are incorporated herein.

1 information about pro-gun groups like Plaintiffs GOA, GOC, CRPA, and SAF. This
2 will harm Plaintiffs' ability to disseminate their message and communicate with gun
3 owners.

4 77. Also, as section 26806 will inevitably result in less political speech
5 involving the organizational Plaintiffs, this will result in fewer members signing up and
6 fewer donations received, directly harming GOA, GOC, CRPA, and SAF as
7 organizations and impeding their ability to perform their nonprofit mission to secure
8 and preserve the right to keep and bear arms in California.

9 78. Finally, section 26806 quite literally will result in California's creation of
10 a partial list of members of GOA, GOC, CRPA and SAF as everyone who signs up as a
11 member of either organization will be monitored and surveilled by the state, clearly
12 violating the First Amendment's prohibition against such government activity. *See*
13 *NAACP*, 357 U.S. at 462; *see also Shelton v. Tucker*, 364 U.S. 479 (1960) (prohibiting
14 forcing schoolteachers to list their political affiliations); *Bates v. City of Little Rock*,
15 361 U.S. 516 (1960) (prohibiting forced disclosure of membership list through
16 regulatory scheme).

17 79. Of course, "disclosure requirements can chill association '[e]ven if there
18 [is] no disclosure to the general public,'" as is the case here, where FFLs must record
19 at the government's behest—but generally not publish—identities and interactions of
20 gun owners. *Ams. for Prosperity Found.*, 141 S. Ct. at 2388.

21 80. In other words, section 26806 goes far beyond requiring the
22 constitutionally repugnant disclosure of mere names on lists, requiring instead the
23 images, likenesses, and utterances of all who may seek to purchase a firearm or even
24 just explore the options of firearms within the state.

25 81. To illustrate just how seriously federal courts have treated the freedom of
26 association, even otherwise proper civil discovery obligations to the government risk
27 running afoul of the First Amendment: "In cases pitting the government against a
28 private association, the Supreme Court has required that the government's interest be

demonstrated to be ‘compelling’ and bear a ‘substantial relation’ to the disclosure sought. Additionally, the government must show that the sought-after disclosure represents the ‘least restrictive means’ for accomplishing its objectives and will not unnecessarily sweep constitutional rights aside. Finally, the Court charges us to weigh against the government’s interest in disclosure the likelihood of injury to an association, or its members, if the desired information is released.” *Adolph Coors Co. v. Wallace*, 570 F. Supp. 202, 208 (N.D. Cal. 1983).

82. California can meet none of these requirements. In particular, the state could never show that the 24/7 audiovisual recording of a business engaged in constitutionally protected conduct and commerce is the *least restrictive* means of accomplishing section 26806’s alleged goal of “public safety and education.”

83. Section 26806 offends the “vital relationship between freedom to associate and privacy in one’s associations.” *Ams. for Prosperity Found.*, 141 S. Ct. at 2382. It is an attack not only on the Second Amendment but on the First Amendment freedom of association as well.

84. Because section 26806 abridges the freedom of association, it is unconstitutional as violative of the First Amendment.

Section 26806 Abridges the Right to Speak Anonymously, Including to Criticize the Government

85. As noted, section 26806 requires ubiquitous audio and video surveillance and recording of every bit of speech that occurs within California’s thousands of gun stores. In other words, there is no possibility that a customer or visitor can speak anonymously with others in such locations, on any topic. Rather, all private conversations will be swept up and monitored by the government.

86. In stark contrast to section 26806’s provisions, this nation’s Founders placed great value on the *anonymous* exercise of constitutional rights. In accordance with this rich historical tradition, the Supreme Court has explained that “an author’s decision to remain anonymous, like other decisions concerning omissions or additions

1 to the content of a publication, is an aspect of the freedom of speech protected by the
2 First Amendment.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 343 (1995).

3 87. Indeed, “[a]nonymity is a shield from ... tyranny [which] exemplifies the
4 purpose behind the Bill of Rights, and of the First Amendment in particular: to protect
5 unpopular individuals from retaliation—and their ideas from suppression—at the hand
6 of an intolerant society.” *Id.* at 357 (citation omitted). Naturally, “[t]he decision in
7 favor of anonymity may be motivated by fear of ... official retaliation, by concern
8 about social ostracism, or merely by a desire to preserve as much of one’s privacy as
9 possible. Whatever the motivation may be ... the interest in having anonymous works
10 enter the marketplace of ideas unquestionably outweighs any public interest in
11 requiring disclosure as a condition of entry.” *Id.* at 341-42.

12 88. Other federal courts have elaborated on the importance of this
13 constitutional protection for anonymous speech: “The right to speak anonymously was
14 of fundamental importance to the establishment of our Constitution. Throughout the
15 revolutionary and early federal period in American history, anonymous speech and the
16 use of pseudonyms were powerful tools of political debate. The Federalist Papers
17 (authored by Madison, Hamilton, and Jay) were written anonymously under the name
18 ‘Publius.’ ... Anonymous speech is a great tradition that is woven into the fabric of this
19 nation’s history.” *Doe v. 2themart.com Inc.*, 140 F. Supp. 2d 1088, 1092 (W.D. Wash.
20 2001).

21 89. Foreshadowing the Panopticon-like risks section 26806’s attack on
22 anonymity would bring, the Supreme Court has cautioned that “the fear of public
23 disclosure of private conversations might well have a chilling effect on private speech.
24 In a democratic society, the privacy of communication is essential if citizens are to
25 think and act creatively and constructively. Fear or suspicion that one’s speech is being
26 monitored by a stranger, even without the reality of such activity, can have a seriously
27 inhibiting effect upon the willingness to voice critical and constructive ideas.”
28 *Bartnicki v. Vopper*, 532 U.S. 514, 533 (2001).

1 90. Section 26806, however, replaces the “stranger” intentionally monitoring
2 the conversation with the State’s executive branch, controlled by the powerful
3 Governor of California, a sworn political enemy of the very constitutional right a gun
4 store customer is attempting to exercise. The First Amendment chilling effect thus is at
5 its zenith. Section 26806’s effect on speech related to Second Amendment rights is
6 equivalent to a law mandating audio and video recording of services and parishioner
7 prayers in every California church, mosque, and synagogue.

8 91. Unsurprisingly, customers at gun stores (gun owners) likely are motivated
9 to engage in speech which is critical of Governor Newsom and other California
10 politicians who advocate for, enact, and enforce laws, regulations, and policies that
11 target gun owners. Indeed, the Executive Branch contains the very officials enforcing
12 the very laws that gun store customers engage in protected political speech to criticize.
13 If such speakers know their comments will be heard only by a sympathetic gun store
14 owner and other like-minded patrons, they are likely to feel free to speak their minds.
15 Conversely, if the government wishes to squelch “political debate” and enable “official
16 retaliation” against critics, what better way than requiring 24/7 facial and voice
17 recording at locations where citizens, exercising a disfavored but enumerated
18 constitutional right, are likely to assemble?

19 92. For example, Plaintiffs Harris, Vandermeulen, Smokin' Barrel Firearms,
20 and On Target declarations explain that local gun stores provide a vital First
21 Amendment platform in their communities, in addition to being a place where
22 Californians can exercise their Second Amendment right to acquire firearms. On a
23 typical weekend morning, there are numerous customers and visitors in these stores at
24 any given time, representing people from all walks of life and from all over the area,
25 but who are generally united in their enjoyment of firearms, their desire to provide for
26 their own self-defense, and their motivation to protect and preserve their Second
27 Amendment rights. *See* Decl. of Jesse Harris in Supp. of original Compl., ECF No. 1-8,
28 ¶¶ 4-7; Decl. of Jeffrey Vandermeulen in Supp. of original Compl., ECF No. 1-3, ¶ 6;

Decl. of Robert Gaalswyk in Supp. of original Compl., ECF No. 1-7, ¶¶ 7, 9; and Decl. of Gregg Bouslog in Supp. of original Compl., ECF No. 1-6, ¶¶ 5-8.

93. Such persons, like Plaintiffs Harris, Richards, GOC, GOA, CRPA, SAF, and Gerald Clark use these local gun stores and gun shows to engage in First Amendment speech about Second Amendment rights including, for example, potential government legislation, executive actions related to firearms, current events, firearms activities such as firearms training and target shooting, and other firearms-related news and issues (not to mention topics dealing with the firearms themselves).

94. In other words, today, gun stores serve the same purpose as once served by 19th- and early 20th-century General Stores, where Americans gathered to discuss local and national issues.¹² See Harris Decl., ¶¶ 4-7; Vandermeulen Decl., ¶ 6; Gaalswyk Decl., ¶¶ 7, 9; Bouslog Decl., ¶¶ 5-8.

95. Section 26806 puts a torch to this important channel for Plaintiffs to meet others and exercise First Amendment speech and association rights on Second Amendment issues.

96. Section 26806 is California's latest effort to target, marginalize, and drive from the market dissenters wishing to exercise the right to keep and bear arms. Stripping gun owners (and those seeking to become gun owners) of their rights to anonymous discourse about political matters, section 26806 permits the very government officials being criticized to monitor the speech and identify the individuals speaking critically of them. It would be hard to conceive of a more tyrannical system than section 26806 imposes. Section 26806 clearly violates the First Amendment right to engage in anonymous speech and must be enjoined.

///

¹² See, e.g., Ronald Taylor, *The Old-Time General Store Was a Symbol of American Enterprise*, Allegany Cnty. Hist. Soc'y, <https://www.alleganyhistory.org/culture/stories-and-folklore/fact-based-stories/465-the-old-time-general-store-was-a-symbol-of-american-enterprise> (last visited June 18, 2024).

**Section 26806 Imposes a Pervasive and Dystopian Surveillance Regime on
Home-Based Licensees**

97. In his dystopian work “1984,” George Orwell described an unthinkable world dominated by constant government surveillance of the most private affairs of its citizens: “The telescreen received and transmitted simultaneously. Any sound that Winston made, above the level of a very low whisper, would be picked up by it, moreover, so long as he remained within the field of vision . . . he could be seen as well as heard. There was of course no way of knowing whether you were being watched at any given moment. . . . It was even conceivable that they watched everybody all the time. You had to live . . . in the assumption that every sound you made was overheard, and, except in darkness, every movement scrutinized.”¹³

98. Beginning in 2024, section 26806 brings this dystopian fiction to life.

99. Section 26806 requires 24/7 audiovisual recording, sufficient to “identify [all] parties” and “activit[ies],” at all “[i]nterior views of all entries or exits to the premises, [a]ll areas where firearms are displayed, [and a]ll points of sale, sufficient to identify the parties involved in the transaction.”

100. Yet even as tyrannical as these requirements are when applied to traditional brick-and-mortar gun stores, the stark reality is that more than 60 percent of gun dealers use their home as their business premises.¹⁴

101. Section 26806’s requirements will destroy the entire spectrum of First Amendment rights exercised by home-based sellers. For numerous such dealers, being home-based makes their business affordable: “Selling firearms is a fairly low-margin business. Depending on the model you’re selling, you can expect to charge 12-20 percent more than your wholesale cost on a new gun. These low margins make it

¹³ George Orwell, *1984*, at 3-4 (1949).

¹⁴ Katherine Anderson, *Home-Based FFL Requirements*, Zenti.com (Apr. 11, 2023), <https://zenti.com/blog/home-based-ffl-requirements/> (last visited June 18, 2024).

1 difficult to run a retail gun store profitably. However, a home-based FFL business has
2 much lower maintenance and labor costs. . . .” *Id.*

3 102. Section 26806 would consign home-based FFLs to the unenviable
4 Hobson’s choice of either losing their business or giving up their most basic First
5 Amendment rights in the (former) privacy of their own homes. To require 24/7
6 surveillance of the interior of one’s home is Orwellian, to say the least.

7 103. The pervasiveness of this surveillance cannot be understated. Many
8 American homes contain multiple “entries or exits,” including a front door, rear door,
9 garage door, basement door, etc. Under section 26806, “the “interior view[]” of each
10 would require constant surveillance, regardless of whether the dealer is currently using
11 his home for business purposes. Section 26806 also requires surveillance in “all areas
12 where firearms are displayed,” without limitation to only business firearms inventory.
13 Thus, even personally owned firearms housed in a glass display case in a living room,
14 or hunting rifles secured in a rack hung on an office wall, would require additional
15 cameras and audio recording. Finally, section 26806 requires surveillance at “all points
16 of sale.” For home-based dealers, colloquially known as “kitchen table FFLs,” this
17 would mean 24-hour surveillance of, for example, a person’s kitchen table, as well.

18 104. Section 26806 would impose great harm to at-home FFL dealers such as
19 Adam Richards who not only operates as an FFL out of his home, but also works as an
20 attorney and has multiple confidential conversation per day that would be fully
21 recorded and break his duty of confidentiality with clients. Section 26806 also impacts
22 Plaintiff Richards’ personal life by placing every small detail of his family into the lens
23 a camera like being on a reality show that they did not sign up for. *See Decl. of Adam*
24 *Richards in Supp. of original Compl., ECF No. 1-2, ¶¶ 3-5, 9, 10.*

25 105. It thus is hardly inconceivable to estimate that a home-based dealer will be
26 required to install government surveillance systems in virtually every corner of the
27 home, perhaps aside from a bedroom or bathroom (the only private places left to
28 escape California’s prying eye).

1 106. Sweeping up virtually all activity that takes place within the home (on a
2 24-hour basis), section 26806's surveillance mandate thus strikes at the heart of several
3 important First Amendment protections.

4 107. For example, the Supreme Court has long recognized the importance of
5 confidential marital communications, to the point that disclosure of such speech cannot
6 be compelled by the government, even in criminal cases: "the protection of marital
7 confidences [is] regarded as so essential to the preservation of the marriage
8 relationship as to outweigh the disadvantages to the administration of justice which the
9 privilege entails." *Wolfle v. United States*, 291 U.S. 7, 14 (1934). Section 26806
10 eviscerates that privilege, even in one's own home, mandating the recording of
11 conversations between spouses, on the most private of topics, including health, sex,
12 religion, political beliefs, personal finances, the rearing of children, and the list goes
13 on.

14 108. Section 26806's application to home-based business also strikes at the
15 free exercise of religion. The chilling effect of 24/7 government monitoring inside the
16 homes of spiritual citizens should be too obvious for argument. For example, Plaintiffs
17 who regularly pray in thanks before meals at the kitchen table may be captured because
18 it is done at the same place he conducts firearms transfers. People may feel that they
19 lack privacy in their own homes and be forced to change rooms, change their habits,
20 alter their religious practices, etc. because of the constant surveillance by the
21 government.

22 109. Plaintiffs' concerns about section 26806's violation of religious freedom
23 are more than theoretical. In 2014, Houston, Texas mayor Annise Parker, the city's
24 first lesbian mayor, issued subpoenas to a group of pastors opposed to her "equal rights
25 ordinance," demanding that they turn over copies of any sermons or communications
26 with parishioners dealing with homosexuality, gender identity, or Parker herself, for
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review by city attorneys.¹⁵ The move sparked a massive national outcry, and resulted in a motion to quash filed by Alliance Defending Freedom on behalf of the pastors. As ADF noted, “[t]hese requests, if allowed, will have a chilling effect on future citizens.”¹⁶ Eventually, and unsurprisingly, Parker and the city backed down.¹⁷

110. Yet Section 26806 will accomplish the same ends, and through more nefarious means. Personal religious conversations between spouses, parents and children, and homeowners and houseguests will be subject to monitoring by the state. Free exercise of religion in Californians’ own homes doubtlessly will be chilled by such monitoring, as will political comments in opposition to politicians such as Governor Newsom, and state policies attacking the right to bear arms.

111. Indeed, the more one thinks about section 26806, the worse it gets. Besides the obvious chilling effects its surveillance will have on political speech and the rights to anonymity and free association, section 26806 will eviscerate free expression almost entirely.

112. Section 26806(a)(1) requires surveillance equipment to “clearly record images and ... audio.” The phrase “clearly record” modifies a conjunctive requirement; therefore, such equipment must also “clearly record ... audio.” Moreover, under section 26806(a)(2), cameras providing such “clear[] record[ing]” of audio must “reasonably produce recordings that allow for the clear identification of any person.” A person’s voice is just one way they may be clearly identified.

113. Taken together, these provisions require a practically sterile audio

¹⁵ Todd Starnes, *City of Houston Demands Pastors Turn Over Sermons*, Fox News, <https://tinyurl.com/y9h72yt8> (May 7, 2015).

¹⁶ Mem. in Supp. of Nonparty Pastors’ Amended Mot. to Quash Subpoenas at 5, *Woodfill v. Parker*, No. 2014-44974 (Tex. Dist. Ct. Harris Cnty. Oct. 9, 2014), <https://adfmedialegalfiles.blob.core.windows.net/files/WoodfillQuashBrief.pdf> (last visited June 18, 2024).

¹⁷ Todd Starnes, *Houston Mayor Drops Bid to Subpoena Pastors’ Sermons*, Fox News (May 7, 2015), <https://www.foxnews.com/opinion/houston-mayor-drops-bid-to-subpoena-pastors-sermons> (last visited June 18, 2024).

1 environment in order for surveillance recordings to comply with the law. Were it
2 otherwise, gun dealers could simply install “white noise” machines next to all audio
3 surveillance devices, which would still capture a “clear[] record[ing]” of “audio”
4 within the store, just not anything helpful to the government. What is more realistic is
5 that a fan in the shop or other noises in the course of business would make it difficult
6 for the recording to pick up anything useful, and therefore, section 26806 is asking
7 FFLs to record their lives, which may be completely unusable.

8 114. Indeed, if cameras must clearly record audio such that persons are clearly
9 identifiable, then section 26806 effectively prohibits ambient audio interference. That
10 means a store clerk cannot listen to a TV show, for fear of its audio garbling the
11 surveillance recording. Christmas music—or any music, for that matter—is similarly
12 verboten. But for home-based FFLs, the implications get worse and worse. Section
13 26806 does not lift its “clear[] record[ing]” mandate outside of business hours; indeed,
14 household occupants will find themselves actors on the set of a 24/7 reality TV show,
15 ensuring the microphones “clearly record” the contents of conversations such that
16 everyone remains identifiable at all times. Of course, the political debate broadcast on
17 the radio will be off-limits, as will be the televised religious sermon, because section
18 26806 requires ambient sterility.

19 115. California no doubt will demur that the surveillance recordings under
20 section 26806 are for limited purposes and promise that they will be used only for
21 firearms-related purposes, such as providing evidence of criminal transfers, or tracking
22 down thieves who rob gun stores. But that misses the whole point about a “chilling
23 effect” on protected speech; the government’s ultimate actions are not the only
24 concern, but rather the effect the restrictions have on persons’ willingness and freedom
25 to speak their minds in the first place. As Winston quipped, “[t]here was of course no
26 way of knowing whether you were being watched. . . . You had to live . . . in the
27 assumption that . . . every movement [was] scrutinized.”

28 116. As applied to home-based FFLs, section 26806 imposes a dystopian

Panopticon that will eviscerate constitutional rights and destroy small business, because no home-based FFL could possibly be expected to comply with such tyrannical demands by the government. To prevent these irreparable harms, section 26806 must be enjoined.

Section 26806 Is Presumptively Unconstitutional Because It Subjects Disfavored Viewpoints to Discriminatory Treatment

117. Section 26806 constitutes nefarious viewpoint discrimination in violation of the First Amendment. It targets only stores engaged in the exercise of Second Amendment rights to possess and transfer firearms. And it punishes only those individuals exercising the right—those with a favorable view of the Second Amendment—with 24/7 surveillance, and not those who disagree with, criticize, or decline to exercise the right themselves.

118. Section 26806’s discriminatory nature is clear on its face: “The test for viewpoint discrimination is whether—within the relevant subject category—the government has singled out a subset of messages for disfavor based on the views expressed.” *Matal v. Tam*, 582 U.S. 218, 248 (2017) (Kennedy, J., concurring).

119. Although this Court need not proceed beyond section 26806’s plain text and real-world effects, the government’s discriminatory intent bears emphasis. Indeed, the hostility of Governor Newsom and the California legislature to the right to keep and bear arms is well-documented. Governor Newsom “has for years crusaded against the gun industry and reaped the political benefits.”¹⁸ From the Governor on down, California has made crystal-clear its opposition to the Second Amendment and its intention to burden, and where possible shut down, those who attempt to exercise the right.

120. Of course, a law that “reflects the Government’s disapproval of a subset

¹⁸ Christopher Cadelago & Jeremy B. White, *Gavin Newsom Wants 28th Amendment for Guns in U.S. Constitution*, Politico (June 8, 2023), <https://www.politico.com/news/2023/06/08/newsom-gun-control-amendment-00100954> (last visited June 18, 2024).

1 of messages it finds offensive ... is the essence of viewpoint discrimination.” *Tam*, 582
 2 U.S. at 249 (Kennedy, J., concurring).

3 121. Accordingly, the Supreme Court has emphasized that, “[w]hen the
 4 government targets not subject matter, but particular views taken by speakers on a
 5 subject, the violation of the First Amendment is all the more blatant. . . . The
 6 government **must** abstain from regulating speech when the specific motivating
 7 ideology or the opinion or perspective of the speaker is the rationale for the
 8 restriction.” *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829
 9 (1995) (emphasis added).

10 122. Consequently, “viewpoint discrimination is an ‘egregious form of content
 11 discrimination’ and is ‘presumptively unconstitutional,’” subject to strict scrutiny.
 12 *Iancu v. Brunetti*, 139 S. Ct. 2294, 2299 (2019). The commercial context of section
 13 26806’s discrimination is inapposite. *See Tam*, 582 U.S. at 251 (Kennedy, J.,
 14 concurring) (“[D]iscrimination based on viewpoint, including a regulation that targets
 15 speech for its offensiveness, remains of serious concern in the commercial context.”).

16 123. Defendants bear the burden of justifying their novel surveillance scheme,
 17 and they cannot. Section 26806 therefore violates the First Amendment’s prohibition
 18 of viewpoint discrimination as well.

19 **Section 26806 Constitutes an Uncompensated Government Taking Under the**
 20 **Fifth Amendment**

21 124. Section 26806 imposes upon licensee Plaintiffs a legal obligation to
 22 purchase government approved video surveillance systems, and to operate, maintain,
 23 and store the resulting video and audio recordings, all at the expense of the licensee.

24 125. Section 26806 imposes on licensee Plaintiffs a legal obligation to
 25 undertake continuous digital video surveillance of their own private property, and to
 26 permit government agents to freely enter upon their property to perpetually access and
 27 view, at-will, that digital video surveillance.

28 126. Mandating that lawful possessors or owners of private property may not

1 interfere with governmental agents who freely enter their property at-will, to
2 perpetually access and view all on-site surveillance video and audio recordings, is a
3 physical appropriation of that property, and a governmental surveillance easement of
4 the private property.

5 127. Such surveillance itself, in addition to at-will entry onto Plaintiffs'
6 property, constitutes a permanent physical occupation of their property.

7 128. Such at-will surveillance, entry, and viewing are neither intermittent nor
8 of a temporary nature.

9 129. Such at-will surveillance, entry, and viewing impair Plaintiffs' right to
10 exclude other persons from their property.

11 130. Such at-will surveillance, entry, and viewing impair Plaintiffs' right to
12 freely use their property, free from the prying eyes of the government.

13 131. Such at-will surveillance, entry, and viewing impair Plaintiffs' right to
14 transact business.

15 132. Such at-will surveillance, entry, and viewing authorize the government to
16 possess and use Plaintiffs' own property as it pleases, and impair Plaintiffs' right to
17 possess, use, and dispose of their own property as they please, in violation of the Fifth
18 and the Fourteenth Amendments.

19 133. Defendants have failed to compensate Plaintiffs for the permanent
20 physical taking or the permanent easement imposed upon Plaintiffs' property.

21 134. Section 26806 commandeers private property owners and lessees to
22 implement and then accommodate a sweeping and perpetual government surveillance
23 scheme without any form of compensation for the significant costs incurred or the
24 severe limitations on property rights suffered. What is more, once California has its
25 section 26806 recording regime in place (with private industry having done all the
26 legwork), California reserves the right to insert itself into gun dealers' stores and
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homes for compliance inspections as often as it pleases – at the dealers’ cost.¹⁹

135. California’s message to businesses engaged in constitutionally protected conduct and commerce is clear: “First, you will spy on your patrons’ lawful conduct for us. Second, you are to bear the costs of our surveillance. Third, you will give us access, on demand, to what you have recorded. Fourth, *you* will pay *us* for *your* trouble.”

136. Designed to curtail such egregious abuses of power, the Takings Clause of the Fifth Amendment provides: “nor shall private property be taken for public use, without just compensation.” The protections of the Takings Clause are incorporated against the states via the Fourteenth Amendment Due Process Clause. *Chi., Burlington & Quincy R.R. v. Chicago*, 166 U.S. 226 (1897).

137. After *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019), Plaintiffs need not exhaust state-court remedies prior to filing a Takings claim in federal court, because such a requirement would have preclusive effect on any subsequent federal claims under *San Remo Hotel, L.P. v. City & County of San Francisco*, 545 U.S. 323 (2005). Accordingly, “[a] property owner may bring a takings claim under § 1983 upon the taking of his property without just compensation. . . .” *Knick*, 139 S. Ct. at 2179.

138. As the Founders recognized uniformly, “the protection of private property is indispensable to the promotion of individual freedom.” *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2071 (2021).

139. Among the most vital rights of property ownership is the right to exclude others, from private individuals to the government itself. *Cedar Point*, 141 S. Ct. at 2072. Indeed, without the right to decide who may enter upon your property and what they may do while there, the right to property does not exist. *See Loretto v.*

¹⁹ California has granted itself the right to inspect gun dealers “at least once every three years,” language that contains no upper limit to inspection frequency. *See* Cal. Penal Code § 26720(a)(1). Indeed, weekly inspections occur “at least once every three years.” Moreover, California compels gun dealers to cover the costs of their own regulatory oversight. *See id.*, § 26720(b).

1 *Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982) (“the power to
 2 exclude has traditionally been considered one of the most treasured strands in an
 3 owner’s bundle. . . .”); *id.* (“Property rights in a physical thing have been described as
 4 the rights ‘to possess, use and dispose of it.’ To the extent that the government
 5 permanently occupies physical property, it effectively destroys each of these rights.”).

6 140. Accordingly, several types of governmental interference with property
 7 rise to the level of “takings” within the meaning of the Fifth Amendment, for which the
 8 government must pay “just compensation.”

9 141. While the formal condemnation or physical possession of property by
 10 government clearly suffice as “takings,” so too do physical intrusions and use
 11 restrictions. Indeed, “[g]overnment action that physically appropriates property is no
 12 less a physical taking because it arises from a regulation,” *Cedar Point*, 141 S. Ct. at
 13 2072, and the “essential question is not . . . whether the government action at issue
 14 comes garbed as a regulation (or statute, or ordinance, or miscellaneous decree),” but
 15 rather “whether the government has physically taken property for itself or someone
 16 else—*by whatever means*—or has instead restricted a property owner’s ability to use
 17 his own property.” *Id.* (emphasis added).

18 142. In 2020, a minority of eight dissenting Ninth Circuit judges wrote that
 19 “[t]he right to enter onto the land of another to take some action is the epitome of an
 20 easement in gross. . . . The Access Regulation gives multiple union organizers the right
 21 to enter onto employers’ private property to ‘meet[] and talk[] with employees and
 22 solicit[] their support’ for three hours a day, 120 days a year. . . . Accordingly, we have
 23 the ‘classic taking’ . . . Because California has ‘appropriate[d] private property for its
 24 own use,’ there has been ‘a per se taking that requires compensation.’” *Cedar Point*
 25 *Nursery v. Shiroma*, 956 F.3d 1162, 1171-72 (9th Cir. 2020) (Ikuta, J., dissenting). Of
 26 course, their minority view was vindicated by the Supreme Court the following year.

27 143. Worse even than California’s “Access Regulation,” section 26806 makes
 28 the Plaintiff licensees Adam Richards, Jesse Harris, Jeffrey Vandermeulen, On Target,

1 and Smokin' Barrel Firearms set aside their property for the state's exclusive use,
 2 purchase the state's electronic equipment on their own dime (in essence install their
 3 own wiretap in their private space), and then stand aside while state officials enter
 4 upon said property to access the system at their pleasure. *See Boise Cascade Corp. v.*
 5 *United States*, 296 F.3d 1339, 1355 (Fed. Cir. 2002) (permanent physical taking when
 6 the government "sunk concrete wells on ... property to monitor groundwater pollution
 7 from a nearby superfund site," and thereafter government "workers ... entered to ...
 8 maintain[] and monitor them. . . . The permanency of the wells and the quasi-
 9 permanent right of entry provided to the government workers who monitored and
 10 maintained them led us to apply the *per se* takings theory of *Loretto*.").

11 **Section 26806 Constitutes an Uncompensated Per Se Physical Intrusion**

12 144. "Whenever a regulation results in a physical appropriation of property, a
 13 *per se* taking has occurred" and just compensation must be paid. *Cedar Point*, 141 S.
 14 Ct. at 2072. A finding of a *per se* physical taking is dispositive; "a permanent physical
 15 occupation constitutes a *per se* taking regardless whether it results in only a trivial
 16 economic loss" and "without regard to whether the action achieves an important public
 17 benefit or has only minimal economic impact on the owner." *Cedar Point*, 141 S. Ct. at
 18 2073 (quoting *Loretto*, 458 U.S. at 434-35).

19 145. In other words, when a *per se* physical taking has occurred, the only
 20 question is *how much* compensation must be paid, not *whether* it should be paid. *See*,
 21 *e.g.*, *Cedar Point*, 141 S. Ct. at 2074 (citation omitted).

22 146. Section 26806's provisions meet this standard and thus constitute a *per se*
 23 physical taking because section 26806 compels the installation of government
 24 surveillance equipment (video cameras, audio recording devices, etc.) at various
 25 locations throughout commercial businesses and private homes across California. *See*
 26 *Otay Mesa Prop. L.P. v. United States*, 86 Fed. Cl. 774, 790-91 (2009), *aff'd*, 670 F.3d
 27 1358 (Fed. Cir. 2012).

28 147. Section 26806 is fairly specific about where such government monitoring

1 devices must be placed – so as to capture “interior views of all entries or exits,” at “all
2 places where firearms are displayed,” and at “all points of sale.”

3 148. Section 26806 removes any discretion from Plaintiff licensees Jesse
4 Harris, Adam Richards, Jeffrey Vandermeulen, On Target, and Smokin' Barrel
5 Firearms how or where to install the government’s surveillance devices and, under
6 section 26806, such devices may not be removed (“[e]ach camera shall be permanently
7 mounted in a fixed location”).

8 149. In a typical business, section 26806’s mandates likely would mean
9 cameras near the front and rear doors, along with at the gun counter, capturing all
10 handguns in display cases, all long guns on wall racks, and at the cash register and/or
11 computer where background checks are performed. It also means a “sign in a
12 conspicuous place at each entrance to the premises” providing government-mandated
13 warnings that government-mandated surveillance is in progress.

14 150. Section 26806’s mandates take priority over a shop owner’s other uses for
15 the real estate of his walls, ceilings, etc.

16 151. Section 26806 thus constitutes a permanent,²⁰ physical, government
17 occupation of numerous portions of (and uses of) Plaintiffs’ property where
18 government surveillance equipment must be installed, and additionally for all space
19 upon the property where cameras and audio equipment are pointed and recording.

20 152. For gun shops, the effect that this law will have on their business is almost
21 indescribable. Tens of thousands of dollars spent on purchasing recording and storage
22 equipment so the government can track them and their customers. Losses in revenue
23 because customers refuse to give up their bundle of other rights in order to exercise a
24 few. Limits to the conversations that would normally happen around gun safety,
25 security needs of the individual and constitutional rights of the gun owner quashed
26

27 ²⁰ Even if section 26806 did not blatantly use the word “permanent,” a taking does
28 not become “temporary” merely because “the government can always change its mind
at a later time. . . .” *Hendler v. United States*, 952 F.2d 1364, 1376-77 (Fed. Cir. 1991).

1 because people are too afraid to have these conversations while under the microscope
2 of a government lens.

3 153. In fact, since SB 1384 took effect, one of the largest firearm retailers in
4 California, Big 5 Sporting Goods, stopped selling firearms altogether in lieu of
5 incurring the costs of installing audio/visual monitoring equipment in compliance with
6 SB 1384.²¹ Some of Plaintiffs' members have also ceased dealing in firearm in lieu of
7 compliance.

8 154. For home-based gun dealers, the physical intrusion is even greater, as
9 surveillance equipment must be installed within one's own home. Mom's ornamental
10 plates on the wall of the dining room must give way to a sterile-looking video camera
11 with a flashing light. Dad's deer antlers on the living room wall must be moved so that
12 more government eavesdropping devices can be affixed to the studs. The most intimate
13 of situations may be recorded and even used against the homeowners in civil or
14 criminal litigation.

15 155. All of the surveillance equipment mandated by section 26806 is
16 permanent ("shall be permanently mounted"). It must record 24 hours a day, 7 days a
17 week. It cannot be removed for special occasions (Christmas dinner), and it may not be
18 turned off or covered while the premises are not open to the public for business.

19 156. Indeed, section 26806 is on all fours with the facts of *Loretto*, where the
20 owner of an apartment building objected to installation of electronic devices (cable TV
21 antennas and boxes) on the *exterior* roof of her building. Here, section 26806 mandates
22 installation of electronic devices (cameras, microphones, computers) on the *interior* of
23 Plaintiffs' businesses, and "literally adds insult to injury" because it makes Plaintiffs
24 pay to be surveilled. *See Loretto*, 458 U.S. at 436.

25 157. Nor is section 26806 permissible under "the State's power to require

26 ²¹ *See* Big 5 Sporting Goods Corp., Annual Report (Form 10-K) (Feb. 28, 2024) at
27 17,
28 <https://www.sec.gov/ix?doc=/Archives/edgar/data/1156388/000095017024021829/bgf-v-20231231.htm> (last visited June 5, 2024).

landlords to comply with building codes and provide utility connections, mailboxes, smoke detectors, fire extinguishers, and the like in the common area of a building,” with no “physical occupation of a portion of his building by a third party.” *Loretto*, 458 U.S. at 440. The government surveillance equipment required by section 26806 in no way relates to devices the government requires be installed for the benefit of those within the property.²² Rather, section 26806’s mandated surveillance equipment is *for the benefit of the government alone*. See *Cedar Point*, 141 S. Ct. at 2072 (“Whenever a regulation results in a physical appropriation of property, a *per se* taking has occurred, and *Penn Central* has no place.”).

158. Indeed, section 26806 explicitly provides that the gun store “shall not use ... recordings” but “shall allow access” to the government at any time. **Under the plain language of section 26806, a gun store could not even examine video and audio recordings after a burglary to attempt to identify the perpetrators.** In other words, section 26806 clearly mandates an “occupation” by the government, forcing gun stores to purchase and install government property, for the sole use and benefit of the government. See *Loretto*, 458 U.S. at 440. And section 26806 permits government agents to come a-knocking at any time, to inspect the system or download its surveillance recordings.²³

159. Compounded by the sheer costs of complying with section 26806’s novel surveillance scheme, this intrusive digital dragnet plainly constitutes a physical taking for which just compensation must be paid.

²² But even if California’s surveillance system somehow benefited the gun store, that does not mean that section 26806 does not constitute a taking. See *Loretto*, 458 U.S. at 422, 438 (concluding, with respect to the installation of “a ‘noncrossover’ line—*i.e.*, one that provided CATV service to appellant’s own tenants,” that there is “no constitutional difference between a crossover and a noncrossover installation”).

²³ Similarly, a requirement that property owners allow non-governmental private parties a right of access on their land is a physical taking under the Fifth Amendment. *Cedar Point*, 141 S. Ct. at 2080.

Enforcement of Section 26806 Constitutes an Uncompensated Regulatory Taking

160. In the alternative, section 26806 is a restriction on the use of property that goes “too far” and therefore amounts to a “regulatory taking.” *Cedar Point*, 141 S. Ct. at 2072.

161. Whether a use restriction rises to the level of compensable “regulatory taking” requires analysis of the factors identified in *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104 (1978). This factual inquiry entails “[t]he economic impact of the regulation on the [property owner],’ (2) ‘the extent to which the regulation has interfered with distinct investment-backed expectations,’ and (3) ‘the character of the governmental action.’” *CDK Glob. LLC v. Brnovich*, 16 F.4th 1266, 1282 (9th Cir. 2021) (alterations in original) (quoting *Penn Central*, 438 U.S. at 124). Elaborating on the “character” factor, the *Penn Central* Court observed that a regulatory “‘taking’ may more readily be found when the interference with property can be characterized as a physical invasion by government.” *Penn Central*, 438 U.S. at 124.

162. Of course, the case at bar is nothing like *Penn Central*, which simply maintained the status quo by denying Penn Central’s ability to construct an office building above Grand Central Terminal, a historic landmark. *Penn Central*, 438 U.S. at 136 (noting that “the New York City law does not interfere in any way with the present uses of the Terminal”).

163. In stark contrast, section 26806 upends the status quo entirely, imposing onerous new surveillance requirements at a significant (and for some, altogether prohibitive) cost. Businessowners and affected homeowners alike will have to change how they use their own properties, as the installation of a Bentham’s Panopticon invariably alters how people under observation behave: “‘The fact that you *won’t* do things, that you will self-censor, are the worst effects of pervasive surveillance,’” reiterates security expert Bruce Schneier, a fellow at the Berkman and in the cybersecurity program of the Kennedy School’s Belfer Center for Government and International Affairs. ‘Governments, of course, know this. China bases its surveillance

1 on this fact. It *wants* people to self-censor. . . .”²⁴ Thus, the “character of the
2 governmental action” here is as tyrannical as it gets.

3 164. Egregious as these effects are, the *Penn Central* factors make all the more
4 clear that section 26806 effectuates a regulatory taking. Indeed, section 26806 entirely
5 upends dealers’ “investment-backed expectations,” especially those who are
6 homeowners. In its surveillance-state zeal, section 26806 imposes prohibitively
7 expensive regulatory burdens that will price countless small-scale gun dealers out of
8 existence. These unprecedented costs naturally interfere with Plaintiffs’ expectations as
9 to the uses of their property and the profit (and indeed livelihood) potential of
10 operating a gun store in California.

11 165. In the context of a home-based dealer, such regulatory limitation amounts
12 to a complete taking because no meaningful domestic use remains if occupants are to
13 be surveilled within their own homes. Indeed, Plaintiffs Richardson and Vandermeulen
14 would rather move out of their homes or quit their businesses than star in section
15 26806’s version of “The Truman Show.” In addition to the weighty cost of purchasing,
16 installing, and maintaining section 26806’s surveillance system, the economic impacts
17 caused by loss of use of a property (especially a home) are crippling.

18 166. Thus, even if the Court finds that section 26806 is not a *per se* physical
19 taking of property for government use, it still constitutes an overbearing regulatory
20 taking for which compensation is due.

21 **Unconstitutionally Compelled Waiver of Fifth Amendment-Protected Privileges**

22 167. By mandating both visual and audio recording 24/7 inside Plaintiffs’
23 premises, including the homes of home-based dealers, section 26806 forcibly intrudes
24 into areas where many privileged communications occur.

25 168. First, with respect to home-based gun dealers, the recording mandate
26

27 ²⁴ Jonathan Shaw, *The Watchers: Assaults on Privacy in America*, Harvard Mag.
28 (Jan.-Feb. 2017), <https://www.harvardmagazine.com/2016/12/the-watchers> (last visited
June 18, 2024).

1 treads into an area which the courts have recognized is essential to protect: spousal
2 communications. *Wolfe v. United States*, 291 U.S. 7, 14 (1934). While case law
3 supports the concept that spousal communications made in public, or where the
4 spouses know that the communication is not in confidence, fall outside the protection,
5 it appears implicit in these decisions that courts differentiate such communications
6 because they occur outside the home. *See, e.g., United States v. Tartaglione*, 228 F.
7 Supp. 3d 402 (E.D. Pa. 2017).

8 169. Indeed, various courts have recognized that the home is different, as the
9 very “purpose of the spousal privilege is to protect the sanctity of the *marriage*
10 *and home*.” *In re Marriage of Sarsfield*, 671 P.2d 595, 600 (Mont. 1983) (emphasis
11 added). The entire concept of waiver of privilege is that one who gives up the privilege
12 could have retreated to a safe space, such as the home, in order to make the
13 communication. Here, the government effectively removes the ability to retreat by
14 requiring recording *within* the sanctity of the home.

15 170. Especially for home-based dealers, section 26806 pays no concern as to
16 other privileges which it might obliterate, such as the doctor/patient privilege. The
17 doctor/patient privilege “reflects ‘the imperative need for confidence and trust’
18 inherent in the doctor-patient relationship and recognizes that ‘a physician must know
19 all that a patient can articulate in order to identify and to treat disease; barriers to full
20 disclosure would impair diagnosis and treatment.’” *Conant v. Walters*, 309 F.3d. 629,
21 636 (9th Cir. 2002) (quoting *Trammel v. United States*, 445 U.S. 40, 51 (1980)).

22 171. Plaintiffs Richards and Harris express concerns over legal conversations
23 that happen in their home office or shop to which Defendants would be made a party
24 should section 26806 be implemented. *See* Richards Decl., ¶ 4, 7, 8; Harris Decl., ¶ 5,
25 9.

26 172. Likewise, the priest-penitent or clergy privilege may also be implicated
27 for individuals who choose to, for example, receive counseling or therapy, or otherwise
28 contact a pastor or priest for guidance on spiritual issues while under government

surveillance at home. *See, e.g., Stevens v. Brigham Young University-Idaho*, 2018 U.S. Dist. LEXIS 100491, at *19 (D. Idaho June 11, 2018) (“[t]he privilege applies to protect communications made (1) to a clergyperson, (2) in his or her spiritual professional capacity (3) with a reasonable expectation of confidentiality.”).

173. Finally, section 26806 egregiously invades the attorney-client privilege. For example, due to the complex regulatory nature of the firearms business, many gun stores frequently communicate with counsel to receive guidance on complex compliance needs. However, given the nonstop nature of the recording under section 26806, and the demand for audio recording in particular, proprietors looking for counsel must *leave* their licensed premises to ensure that their communications with their lawyer are not captured and recorded, which would waive their privilege.

174. Of course, leaving the premises (which is now recorded) to call counsel is not feasible in many cases, as gun stores may require guidance *about their records*, which they are statutorily forbidden from removing from the licensed premises. *See* 27 C.F.R. § 478.129.

175. Indeed, many gun stores have retained counsel via programs to conduct mock audits and provide them advice at the licensed premises.²⁵

176. These privileged interactions would now be recorded under section 26806.

177. Section 26806 thus invades and violates all of the most fundamental privileges against disclosure of conversations. By mandating that every gun store owner and home-based dealer record all of their conversations for review by the State, section 26806 invades the Fifth Amendment’s privileges against disclosure of many conversations.

Right to Privacy Under the Fourth Amendment

178. The Fourth Amendment provides that “[t]he right of the people to be

²⁵ *See, e.g., FFL DealerShield*, U.S. LawShield, <https://www.uslawshield.com/ffl/#:~:text=With%20FFL%20DealerShield%20from%20U.S.,business%20for%20an%20ATF%20audit> (last visited Dec. 8, 2023).

1 secure in their persons, houses, papers, and effects, against unreasonable searches and
2 seizures, shall not be violated, and no Warrants shall issue, but upon probable cause,
3 supported by Oath or affirmation, and particularly describing the place to be searched,
4 and the persons or things to be seized.” *See Mapp v. Ohio*, 367 U.S. 643 (1961); *Ker v.*
5 *California*, 374 U.S. 23 (1963); *Aguilar v. Texas*, 378 U.S. 108 (1964).

6 179. The Fourth Amendment was a direct repudiation of the oppressive writs
7 of assistance and general search warrants that colonial merchants suffered under
8 British rule. These writs operated without expiration and granted officials wide latitude
9 in searches because they did not enumerate specific items, places, persons, or
10 timeframes for governmental intrusion. *Payton v. New York*, 445 U.S. 573, 583-84
11 (1980); and *Boyd v. United States*, 116 U.S. 616, 625 (1886) (“The practice had
12 obtained in the colonies of issuing writs of assistance to the revenue officers,
13 empowering them, in their discretion, to search suspected places for smuggled goods. .
14 . .”).

15 180. Rejecting these open-ended, perpetual searches, the Founders sought to
16 protect the people from unreasonable governmental intrusions. Consequently, “the
17 principles reflected in the Amendment ‘reached farther than the concrete form’ of the
18 specific cases that gave it birth, and ‘apply to all invasions on the part of the
19 government and its employes of the sanctity of a man’s home and the privacies of
20 life.’” *Payton*, 445 U.S. at 585 (quoting *Boyd*, 116 U.S. at 630).

21 181. The protection against unreasonable searches and seizures naturally
22 “extends to commercial premises.” *De La O v. Arnold-Williams*, 2006 U.S. Dist.
23 LEXIS 91919, at *15 (E.D. Wash. Dec. 20, 2006). The Fourth Amendment also
24 applies with equal force in civil and criminal contexts, because unreasonable
25 governmental intrusions are odious no matter the form they take or the penalty they
26 impose. *See Safaie v. City of Los Angeles*, 2020 U.S. Dist. LEXIS 87227, at *6 (C.D.
27 Cal. Mar. 23, 2020) (“Whether the search is conducted pursuant to a civil or criminal
28 investigation, *i.e.*, whether the potential penalty is an arrest or citation, is irrelevant for

1 Fourth Amendment purposes.”).

2 182. In order “[t]o state a Fourth Amendment claim based upon an
3 unreasonable search, [a] plaintiff must allege (1) government conduct that constitutes a
4 search within the meaning of the Fourth Amendment; and (2) that the search was
5 unreasonable. *Taylor v. City of Saginaw*, 922 F.3d 328, 332 (6th Cir. 2019)

6 183. As the Supreme Court has observed, “[w]hen ‘the Government obtains
7 information by physically intruding’ on persons, houses, papers, or effects, ‘a “search”
8 within the original meaning of the Fourth Amendment has ‘undoubtedly occurred.’”
9 *Florida v. Jardines*, 569 U.S. 1, 5 (2013); *see also id.* at 6 (“entering and occupying the
10 area to engage in conduct not explicitly or implicitly permitted by the homeowner”).

11 184. Departing from the Fourth Amendment’s property-rights foundation in the
12 20th century, the Supreme Court alternatively has found “official intrusion[s] into th[e]
13 private sphere” to qualify as “searches” when an individual has a “reasonable
14 expectation of privacy.” *Carpenter v. United States*, 138 S. Ct. 2206, 2213 (2018)
15 (explaining doctrinal history); *see also United States v. Jones*, 565 U.S. 400, 406-07
16 (2012) (“ ‘reasonable expectation of privacy’ . . . did not repudiate” the property
17 focus).

18 185. Under either conception (property or privacy), Section 26806 mandates an
19 unreasonable Fourth Amendment “search.”

20 186. The compelled installation of audiovisual surveillance on private property
21 undoubtedly is a Fourth Amendment search because such surveillance is a physical
22 intrusion on and occupation of private property for the purpose of collecting
23 information.

24 187. Section 26806 mandates the installation of surveillance equipment in
25 private homes and businesses for the collection and long-term retention of information
26 to which California will then have the right to access. In other words, California will
27 physically intrude upon these locations and permanently install its “eyes” and “ears” to
28 observe all that goes on.

Section 26806 Operates as a Forbidden General Warrant

188. Section 26806 operates as a general warrant, contrary to the Fourth Amendment’s “precise and clear” command that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” *Stanford v. Texas*, 379 U.S. 476, 481 (1965).

189. A general warrant allows government officials to “rummage . . . in an unrestrained search for evidence of criminal activity,” *Riley v. California*, 573 U.S. 373, 403 (2014), and therefore is *per se* unreasonable without further analysis. *Weeks v. United States*, 232 U.S. 383, 390 (1914) (describing “unreasonable searches and seizures, such as were permitted under the general warrants” of British rule).

190. Among the most oppressive historical general warrants were writs of assistance. These “hated writs of assistance had given customs officials blanket authority to search where they pleased for goods imported in violation of the British tax laws.” *Stanford*, 379 U.S. at 481.

191. Like the repudiated general warrant, section 26806 grants enforcement officials blanket authority to examine **all locations** identified in the statute without any particularized suspicion of criminal activity. *Cf. Stanford*, 379 U.S. at 481 (“blanket authority to search where they pleased”).

192. Like the general warrant, section 26806 operates without expiration, remaining in effect on a permanent basis. *Cf. James Otis: Against Writs of Assistance*, *Nat’l Humans. Inst.* (Feb. 1761), <https://teachingamericanhistory.org/document/speech-against-writs-of-assistance/> (last visited June 26, 2024) <https://teachingamericanhistory.org/document/speech-against-writs-of-assistance/> (“perpetual; there is no return”).

193. Like the general warrant, section 26806 fails to interpose between the property owner and the executive officer a neutral judicial officer who first must be satisfied that the places and people to be searched have been described with

1 particularity. *Cf. James Otis: Against Writs of Assistance, supra* (“A man is
 2 accountable to no person for his doings.”); *Weeks*, 232 U.S. at 390 (“there had been
 3 invasions of the home and privacy of the citizens and the seizure of their private papers
 4 in support of charges, real or imaginary, made against them”); *see also California v.*
 5 *Acevedo*, 500 U.S. 565, 586 (1991) (Stevens, J., dissenting) (describing the Fourth
 6 Amendment “as a bulwark against police practices that prevail in totalitarian
 7 regimes”).

8 194. And like the general warrant, section 26806 authorizes intrusions into
 9 *homes and businesses* engaged in California’s disfavored sort of commerce. *Cf. James*
 10 *Otis: Against Writs of Assistance, supra* (“a person with this writ, in the daytime, may
 11 enter all houses, shops, etc., at will”).

12 195. Accordingly, section 26806 violates the Fourth Amendment’s prohibition
 13 of general warrants and is *per se* unconstitutional.

14 **Section 26806’s Surveillance Scheme Invades Plaintiffs’ Property Without**
 15 **License or Warrant and Is Therefore “Unreasonable”**

16 196. Although this Court may resolve its Fourth Amendment question based on
 17 the flat historical prohibition of general warrants, section 26806’s constitutional defects
 18 do not end there. Indeed, section 26806 compels intrusions into individuals’ private
 19 property without individual permission, judicial warrant, or any claim of superior
 20 property interest in Californians’ shops and homes. Under the Fourth Amendment’s
 21 traditional protection of property rights, such intrusions cannot stand.

22 197. Under *Jones* and *Jardines*, an unconsented and unwarranted physical
 23 intrusion onto an individual’s property to gather information for the government
 24 constitutes an unreasonable search without regard to any privacy expectations. *Jones*,
 25 565 U.S. at 404-05 (“The Government physically occupied private property for the
 26 purpose of obtaining information. We have no doubt that such a physical intrusion
 27 would have been considered a ‘search’ within the meaning of the Fourth Amendment
 28 when it was adopted.”); *see also id.* at 413 (Sotomayor, J., concurring) (“I join the

1 Court’s opinion because I agree that a search within the meaning of the Fourth
2 Amendment occurs, at a minimum, ‘[w]here, as here, the Government obtains
3 information by physically intruding on a constitutionally protected area.’”); *Jardines*,
4 569 U.S. at 7 (examining whether a search “was accomplished through an unlicensed
5 physical intrusion”).

6 198. In other words, in order to commit a trespass against an individual’s
7 property for a search, the government must prove a superior property interest in the
8 “person[], house[], paper[], [or] effect[],” U.S. Const. amend. IV, such as through a
9 warrant based upon probable cause, a seizure of stolen property (in which the
10 individual has no property interest), or a seizure of contraband (in which no individual
11 can claim lawful interest).

12 199. Section 26806, without any warrant, oath or affirmation, or probable
13 cause of any wrongdoing, “physically occupie[s] private property for the purpose of
14 obtaining information” by requiring the installation of government recording
15 equipment against the will of businessowner and homeowner alike. *Jones*, 565 U.S. at
16 404. Accordingly, there is “no doubt that such a physical intrusion would have been
17 considered a ‘search’ within the meaning of the Fourth Amendment when it was
18 adopted.” *Id.* at 404-05.

19 200. While an intrusion (and indeed occupation) of Plaintiffs’ private property
20 is dispositive on the unreasonable-search question, section 26806’s edicts are
21 especially intolerable for home-based dealers.

22 201. Indeed, invasive household surveillance implicates *all* of the property
23 interests identified in the Fourth Amendment’s text. Not only will Plaintiffs’ “houses”
24 be searched while on camera, but so will their “persons” be, as will their relatives and
25 guests be, should they find themselves within view of one of the likely multiple
26 permanently mounted cameras required by section 26806. What previously may have
27 been an underwear-clad, late-night traipse to the bathroom is now, under section
28 26806, essentially a public outing. Similarly, all personal property (papers and effects)

1 within view will be unable to escape California’s prying eyes. As a result, California
2 has managed to violate the entirety of an amendment’s text in one fell swoop.

3 202. Because section 26806 mandates physical intrusions of Plaintiffs’
4 property for the purpose of gathering information, such a mandate violates the Fourth
5 Amendment’s protection against unreasonable searches of “persons, houses, papers,
6 and effects,” which must be “secure.”

7 **Section 26806 Violates Plaintiffs’ Reasonable Expectations of Privacy**

8 203. The Supreme Court’s “privacy” doctrine provides a distinct basis for relief
9 under the Fourth Amendment. *See Katz v. United States*, 389 U.S. 347 (1967).
10 According to this principle, “a person must show he had a ‘legitimate expectation of
11 privacy.’ To establish a ‘legitimate’ expectation of privacy, he must demonstrate a
12 subjective expectation that his activities would be private, and he must show that his
13 expectation was ‘one that society is prepared to recognize as reasonable.’” *United*
14 *States v. Nerber*, 222 F.3d 597, 599 (9th Cir. 2000).

15 204. Using this “reasonable expectation of privacy” formulation, the Supreme
16 Court has “found a [Fourth Amendment] violation in attachment of an eavesdropping
17 device to a public telephone booth.” *Jones*, 565 U.S. at 406 (citing *Katz*, 389 U.S. at
18 351).

19 205. Section 26806 violates this test multiple times over by installing
20 eavesdropping devices on all *private* properties where firearm dealing occurs—
21 including the home.

22 206. Section 26806’s eavesdropping devices collect much more than just audio,
23 which the Court already has found to be intolerably intrusive. *See Kyllo v. United*
24 *States*, 533 U.S. 27, 35 (2001) (discussing “*Katz*, where the eavesdropping device
25 picked up only sound waves that reached the exterior of the phone booth”); *cf.* Cal.
26 Penal Code § 26806(a) (requiring audio *and* video *inside* the proverbial phone booth).

27 207. Section 26806 captures all manner of information, locations, and conduct
28 to which individuals maintain a reasonable expectation of privacy. For instance,

1 Plaintiffs Richardson and Vandermeulen legitimately expect their homes to be private
2 and free from constant governmental surveillance of their family, visitors,
3 conversations, and all aspects of private daily life. This expectation is plainly
4 “reasonable” under the Fourth Amendment because “‘at the very core’ of the Fourth
5 Amendment ‘stands the right of a man to retreat into his own home’” and “there be
6 free from unreasonable governmental intrusion.” *Soldal v. Cook County*, 506 U.S. 56,
7 61 (1992); *Silverman v. United States*, 365 U.S. 505, 511 (1961); *see also Nerber*, 222
8 F.3d at 602.

9 208. Similarly, Plaintiffs Jesse Harris, On Target, and Smokin' Barrels
10 Firearms legitimately expect their businesses to be private to the extent that it is free
11 from constant governmental audiovisual surveillance of all employees, patrons,
12 conversations, and transactions. This expectation is “reasonable” under the Fourth
13 Amendment because society does not expect constitutionally protected commerce to be
14 subject to such intrusive surveillance. Indeed, it never has been in the past.

15 209. Section 26806 undoubtedly sanctions “searches” under the Court’s
16 “privacy” test. *See Katz*, 389 U.S. at 353 (noting that “the reach of that Amendment
17 cannot turn upon the presence or absence of a physical intrusion into any given
18 enclosure”); *Jones*, 565 U.S. at 414 (Sotomayor, J., concurring) (emphasis added)
19 (citation omitted) (“Nonetheless, as Justice Alito notes, physical intrusion is now
20 unnecessary to many forms of surveillance. With increasing regularity, the government
21 will be capable of duplicating the monitoring undertaken in this case by enlisting
22 factory- or owner-installed . . . devices. . .”).

23 210. California has no legitimate interest in recording the identities and
24 interactions of people exercising their constitutional rights, which will serve only to
25 chill the exercise of those rights. No state can claim an interest in chilling the exercise
26 of constitutional rights, the very negative rights that the state is tasked with *not*
27 violating. *Jones*, 565 U.S. at 416 (Sotomayor, J., concurring) (“Awareness that the
28 government may be watching chills associational and expressive freedoms. And the

1 government’s unrestrained power to assemble data that reveal private aspects of
2 identity is susceptible to abuse.”).

3 **The “Highly Regulated Industry” Exception to the Warrant Requirement**
4 **Cannot Save Section 26806**

5 211. To be sure, courts have recognized an exception to the warrant
6 requirement for administrative searches in so-called “highly regulated industries,” to
7 which firearm dealers have been found to belong. *See, e.g., United States v. Hamad*,
8 809 F.3d 898, 905 (7th Cir. 2016) (“sellers of alcohol and firearms are highly regulated
9 and licensed and therefore subject to the administrative search exception”).

10 212. To be “reasonable,” a warrantless administrative search of a highly
11 regulated industry “must be specifically authorized by statute, and the parameters of
12 any exception to the search warrant requirement must be found in the statute.” *Taylor*
13 *v. Va. Alcoholic Beverage Control Auth.*, 827 S.E.2d 15, 25 (Va. Ct. App. 2019) (citing
14 *Biswell*, 406 U.S. at 315 (1972)). While statutes may authorize warrantless
15 administrative searches, these searches remain susceptible to overbreadth challenges if
16 they sweep too far. *See Rush v. Obledo*, 756 F.2d 713, 719 (9th Cir. 1985).

17 213. Violating that principle, section 26806 subjects home-based dealers to
18 searches “at any time of the day or night” because surveillance must be continuous and
19 uninterrupted. *Rush*, 756 F.2d at 721.

20 214. Section 26806 does not lift its surveillance mandate during non-business
21 hours, despite the fact that a home-based dealer “at all other times is a private
22 residence.” *Rush*, 756 F.2d at 721. Indeed, section 26806 contains no limiting principle
23 whatsoever. Accordingly, Section 26806 is “thus invalid under the Fourth Amendment
24 as [a] general search[.]” *Rush*, 756 F.2d at 723.

25 **Hypothetical Costs**

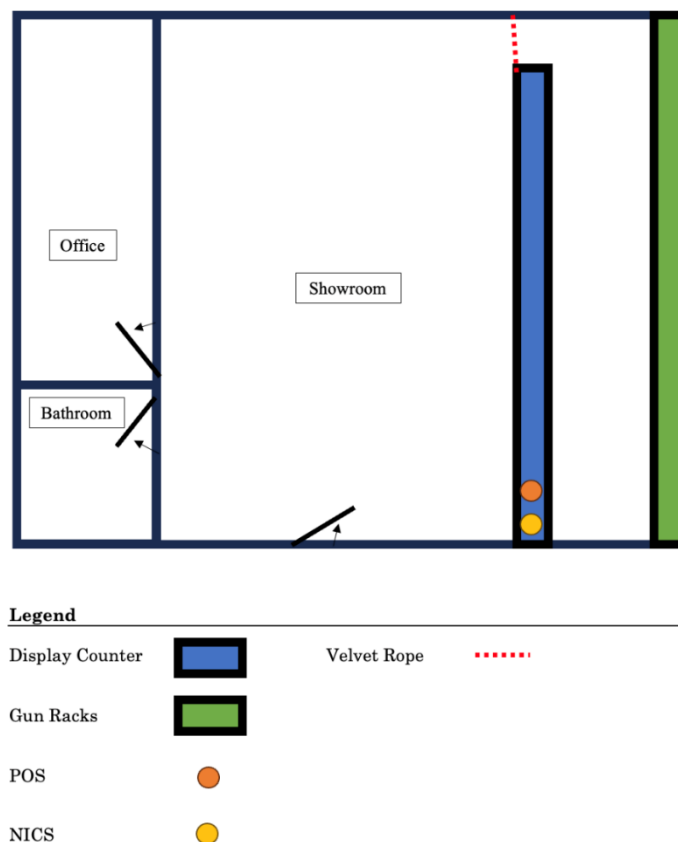
26 215. To demonstrate the costs, take a hypothetical gun store with a simple 20’
27 x 20’ floorplan, with gun racks lining one full 20’ wall and an 18’ glass display counter
28 in front of it, with 4’ of space between the counter and the racks for employees to

work.

216. Further, this hypothetical store will have one point-of-sale (“POS”) system where transactions occur, which is located on the display counter in the corner where the counter meets the wall. The National Instant Criminal Background Check (“NICS”) station is located immediately next to the computer, between the POS and the wall.

217. There is only one door that leads to the outside of the store. It is used as the sole entrance and exit for clients, employees, and inventory deliveries (unlikely in most gun stores). On the wall opposite the firearm display, there is a bathroom and an office that doubles as a stockroom.

218. Finally, there are no other displays or obstructions in the middle of the showroom. The gun store has a drop ceiling and sheetrock walls with wood studs, and there is neither a basement nor an attic. *See Fig. 1.1:*



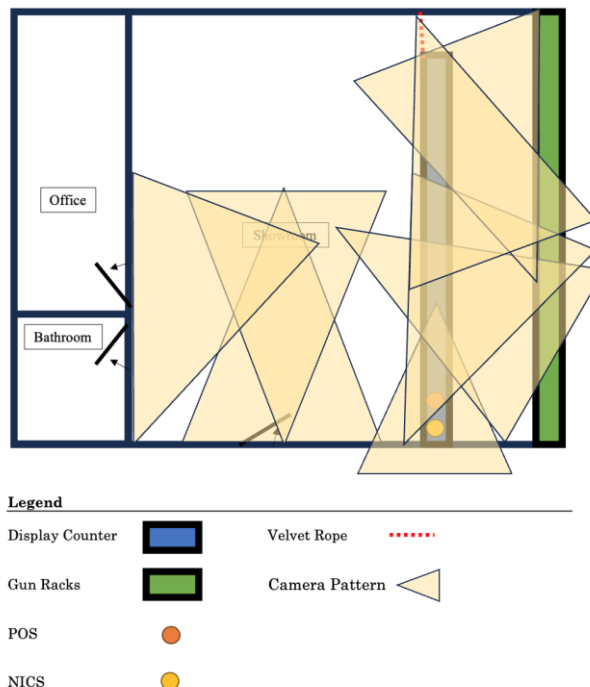
219. **Cameras.** Section 26806 requires that cameras must be “digital,”

“permanently mounted in a fixed location,” that the system record “audio,” and that it capture images capable of “clear identification of any person.”

220. The cameras must be of sufficient quantity to record all interior views of “entries and exits,” “all areas where firearms are displayed,” and all POS stations “sufficient to identify the parties involved in the transaction.” Cal. Penal Code § 26806.

221. Based on those statutory requirements, in the above hypothetical gun store, a minimum of eight cameras would be required: one camera capturing customers entering the store, one capturing people leaving the store, one capturing the doors to the bathroom and office/storeroom, one focused on the POS from mid-store, one on the same wall as the POS capturing a portion of the display counter and gun rack, one on the wall opposite the POS capturing the display counter and part of the gun rack, one mid-store aiming towards the counter and gun rack, and finally one aiming from the gun rack towards the opening for the display counter.

222. Even then, it would be difficult to capture everything that the statute demands. *See* Fig. 1.2:



223. Because the statute fails to specify what resolution cameras are acceptable, a middle-of-the-road camera system was chosen: Luma Surveillance 420 Series 4MP Dome IP cameras with built-in microphones and motorized varifocal lenses that allow the cameras to be customized to the shot. These cameras have an MRSP of \$518.00 each. Eight cameras would cost approximately \$4,144.00.

224. **Recording.** The statute requires the ability to record high-quality audio and video continuously, 24 hours a day, at a minimum of 15 frames per second, and to store that information for a minimum of one year. Cal. Penal Code § 26806.

225. Recording video alone and omitting the audio, would require roughly 105 terabytes (“TB”) of storage using H.265 compression.²⁶

226. Additionally, in order to comply with Section 26806’s requirements, the network video recorder (“NVR”) necessary for recording would need to be secure, send notifications when it goes down, and accurately display the date and time. Cal. Penal Code § 26806.

227. For example, a Luma Surveillance 820 Series 32-Channel Network Video Recorder would accommodate the needed storage. The NVR itself has an MSRP of \$3,238.00 and can handle a maximum of eight 18TB hard drives for a total capacity of 144TB, greater than the 105TB estimated requirement for video recordings. The extra space should be sufficient to accommodate the audio recording but, of course, is insufficient to provide a redundant backup.

228. Installed within that NVR could be, for example, Western Digital WD Purple Pro Smart Video 18TB Hard Drives, at \$369.99 each, for a total of \$2,959.92. Together, the NVR and hard drives come to \$6,197.92.

229. Of course, a redundant backup system could double this cost.

²⁶ See *Surveillance Storage Calculator*, Seagate.com, <https://www.seagate.com/video-storage-calculator/> (last visited June 18, 2024) (“8” cameras; “15” frames per second; “24” hours per day; “365” days stored; “high” video quality; double “1080P” results = 105.4TB; compare to “3MP” + half the difference between “5MP” = 104.3TB).

1 230. **Power.** Power to the cameras likely would be provided by the NVR
2 through power-over-ethernet (“POE”) connection. The NVR would require an
3 uninterruptible power supply (“UPS”) of sufficient size to ensure that audio and video
4 continued to record, even during utility maintenance or power outages.

5 231. A Wattbox IP UPS Kit, which offers 12 controllable outlets, surge
6 protection, power conditioning, and a 2000VA battery backup has an MSRP of
7 \$2,476.95.

8 232. **Accessories.** To house and secure the system and to prevent tampering,
9 unauthorized access or use, or theft—as required by statute—it would require a
10 lockable rack system (at a minimum). A Strong FS Series 21U Rack System Package
11 with DC cooling fans would cost approximately \$1,039.45.

12 233. **Installation.** Obviously, installation costs can vary, but an estimate of
13 \$250.00 per camera to mount each camera and run its respective wiring through walls,
14 ceiling, under carpet or flooring, etc., is reasonable. Accordingly, eight cameras might
15 cost \$2,000.00 to mount and wire.

16 234. Installing and configuring the hard drives likely would cost \$50.00 per
17 hard drive, or \$400.00 in total.

18 235. Installing and configuring the components into the rack system would
19 easily cost another \$200.00.

20 236. Setting up and fine-tuning the entire system, configuring settings, remote
21 access, and alerts so that everything operates smoothly, and providing store employees
22 with instruction on proper use of the system, would be an additional \$600.00.

23 237. Total installation costs for this small system thus could be expected to be
24 approximately \$3,200.00.

25 238. **Total.** Estimating \$4,144.00 for cameras, \$6,197.92 for the NVR and hard
26 drives, \$2,476.95 for surge protection and UPS, \$1,039.45 for a rack system to protect
27 and house the components, and \$3,200.00 in labor totals approximately \$17,058.32
28 prior to sales tax, shipping, or other costs not specifically identified herein.

1 239. This estimate also does not take into account ongoing system
2 maintenance, to include replacing cameras that malfunction, hard drives that eventually
3 wear out, or additional redundant recording systems, should the original system go
4 down or otherwise not function properly.

5 240. Of course, depending on the type of store, this figure can vary wildly to
6 the upside, as not all retail stores are simple squares with easily determined mounting
7 locations to capture all of the places, images, and audio the statute requires.

8 241. For example, Plaintiff GOC has heard from at least one large retailer who
9 reportedly already has spent in excess of \$250,000 in order to comply with section
10 26806. Of course, many California dealers have not yet complied with section 26806.

11 242. Needless to say, the costs imposed on California gun stores and dealers
12 (including home dealers) are astronomical.

13 243. For many gun stores, such as Plaintiffs On Target, Smokin' Barrels
14 Firearms, and Harris, this cost is prohibitive.

15 244. For home-based dealers, such as Plaintiffs Richards and Vandermeulen,
16 this cost is prohibitive and will drive them out of business entirely.

17 **Section 26806's Recordings are Unlawful Under Federal Law**

18 245. The federal Wiretap Act, 18 U.S.C. § 2511(1)(a), prohibits "any person
19 who . . . intentionally intercepts, endeavors to intercept, or procures any other person to
20 intercept or endeavor to intercept, any wire, oral, or electronic communication. . . ."
21 Subsections (c) and (d) provide additional penalties for "disclosure" and "use" of that
22 wiretapped conversation. Here, there is no exception if "one of the parties to the
23 communication has given prior consent to such interception," because it is California
24 (a third party) that has imposed the surveillance requirement on gun dealers. Again,
25 Plaintiffs do not consent to California recording their conversations. Section 26806
26 thus appears to legislate a violation of federal law or, alternatively, should be found to
27 be preempted by federal law.

28 246. Plaintiffs routinely speak with customers over the phone, in order to take

1 orders, schedule pickups, receive payments, arrange appointments, etc. Oftentimes,
2 Plaintiffs uses the phone's "speaker phone" in order to work the computer, review
3 paperwork, or otherwise multitask when talking with customers by phone. Section
4 26806 thus would result not only in Plaintiffs' side of the conversation being recorded,
5 but also that of his customers, suppliers, other dealers, and more.

6 247. Naturally, Plaintiffs' customers who call in by phone will be unable to see
7 the "conspicuous" signage posted on the exterior of the store required under section
8 26806, warning them that their conversation is being recorded.

9 **Section 26806 Opens FFLs Up to Criminal and Civil Liability**

10 248. Additionally, section 26806 places FFLs in danger of legal action against
11 them for recording customers and patrons who have not given their consent to be
12 recorded. Even with the mandatory sign placement, California is a mutual consent state
13 and requires the consent of all parties being recorded. If an individual does not consent
14 to be recorded carrying out a constitutional right to purchase a firearm, they will not be
15 able to purchase a firearm at all in the state. It is either forced compliance to the
16 government listening to private conversations or not purchasing a firearm or
17 ammunition at all.

18 249. Many FFLs operate their small businesses out of their homes. Many do
19 the firearm transfer paperwork with a client at the kitchen table. Imagine the shocking
20 intrusion that a fixed camera, recording all conversations 24 hours per day, would have
21 on the entire household or anyone visiting the home, even when no firearms
22 transactions are taking place. Every dinner guest, handyman, child's playdate, or
23 potentially the client of a spouse who works from home would have to give consent to
24 be recorded. Every telephone conversation or intimate family issue, recorded. It is
25 unfathomable the reach that Section 26806 has in the intrusion upon the private lives
26 and private conversations of people simply because they are visiting the premises of an
27 FFL.
28

SB 1384 Will Not Stop Gun Violence and Crime

250. The bill comments by Senator Min note that the need for this bill is “[t]o ensure gun owners are educated about the dangers of firearm usage.” *See* S. Comm. on Pub. Safety hearing on S. Bill 1384, at 5 (Cal. Apr. 19, 2022), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB1384#. It is unclear how forcing recorded conversations (video and audio) will help gun owners to be more educated about the “dangers of firearm usage.” Defendants offer no evidence to support that section 26806 will accomplish these governmental goals.

251. A recent article stated that “we find evidence that some retailers contribute disproportionately to the supply of crime guns, though much less dramatically than statistics often cited would suggest. The data indicate that there may be somewhat fewer problematic dealers now than there were a decade ago.” This, directly from conversations with CA DOJ and the impact they have already had in shutting down dealers who do not comply under current laws.²⁷

252. A statewide dealer regulation was also passed in 2013, requiring all persons engaged in the business of selling firearms to possess a state Certificate of Eligibility and be named on the state’s Centralized List of firearms retailers. Cal. Pen. Code § 28450.

253. The California Senate Public Safety Committee’s April 19, 2022, analysis of AB 1384 relied on studies on retail gun theft that are either older (2016 or earlier) or that deal with nationwide issues and not specifically any issues with gun shops in California. *See* S. Comm. on Pub. Safety hearing on S. Bill 1384, at 9 5 (Cal. Apr. 19, 2022),

²⁷ Hannah S. Laqueur, et al., *Trends and Sources of Crime Guns in California: 2010-2021*, J. of Urban Health (Sept. 11, 2023), <https://link.springer.com/article/10.1007/s11524-023-00741-y> (last visited Dec. 3, 2023).

1 https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB
 2 1384#. Much has changed in California over the past decade, and relying on factual
 3 data that is that far out of touch with our current reality makes little sense to those truly
 4 searching for the science behind the issues of our time.

5 254. The sponsors of SB 1384 were hopeful that somehow adding costly
 6 surveillance and audio requirements would stop theft of gun shops,²⁸ but as retail crime
 7 rises in California, the use of video surveillance does not seem to be any kind of
 8 deterrent to criminals willing to break the law. *See, e.g., Lofstrom & Martin, Retail*
 9 *Theft and Robbery Rates Have Risen Across California, supra*; Ryan Fonseca, *What*
 10 *We Know (and Don't) About the Rise in Retail Theft*, LA Times (Oct. 18, 2023),
 11 [https://www.latimes.com/california/newsletter/2023-10-18/what-we-know-and-dont-](https://www.latimes.com/california/newsletter/2023-10-18/what-we-know-and-dont-about-the-rise-in-retail-theft-essential-california)
 12 [about-the-rise-in-retail-theft-essential-california](https://www.latimes.com/california/newsletter/2023-10-18/what-we-know-and-dont-about-the-rise-in-retail-theft-essential-california) (last visited June 18, 2024)
 13 (paywalled); *As retailers close stores due to shoplifting, are the concerns real or*
 14 *overblown?* PBS NewsHour, <https://www.youtube.com/watch?v=1Mnwgh5XGhk> (last
 15 visited June 18, 2024).

16 **Section 26806 Improperly Conditions the Exercise of One Enumerated**
 17 **Right on the Forfeiture of Others**

18 255. Under section 26806, Californians seeking to exercise their Second
 19 Amendment rights to acquire firearms must leave many other constitutional rights at
 20 the gun shop door.

21 256. The Supreme Court has found it “intolerable that one constitutional right
 22 should have to be surrendered in order to assert another.” *Simmons v. United States*,
 23 390 U.S. 377, 394 (1968) (recognizing an “undeniable tension” between the exercise of
 24 Fourth and Fifth Amendment rights when the government uses testimony in support of
 25

26 ²⁸ *But see* S. Comm. on Pub. Safety hearing on S. Bill 1384, at 7 (Cal. Apr. 19,
 27 2022),
 28 https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB
 1384# (“the rate of gun store thefts seems to have tapered slightly in recent years since
 peaking in 2016 (690), with 208 reported thefts in 2021.”).

1 a suppression motion at a later trial to prove guilt); *see also United States v. Jackson*,
2 390 U.S. 570, 581 (1968).

3 257. Californians seeking to purchase firearms should not be forced, even
4 temporarily, to surrender their First Amendment rights to criticize California policies
5 and politicians in order to exercise their Second, Fourth, or Fifth Amendment rights.
6 But that will be the direct result of section 26806's chilling effect when persons visit
7 California gun stores. "The loss of First Amendment freedoms, for even minimal
8 periods of time (like while in a gun store), unquestionably constitutes irreparable
9 injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

10 258. Likewise, courts have had no trouble concluding that recording one's
11 personal biometric information without consent is equivalent to an "act of trespass."
12 *Bryant v. Compass Grp. USA, Inc.*, 958 F.3d 617, 624 (7th Cir. 2020). "Consent" to be
13 recorded for the "privilege" of exercising a constitutional right cannot be mandated by
14 governmental edict, nor the refusal to give "consent" criminalized. Indeed,
15 "[government] may not deny a benefit to a person on a basis that infringes his
16 constitutionally protected interests – especially, his interest in freedom of speech. For
17 if the government could deny a benefit to a person because of his constitutionally
18 protected speech or associations, his exercise of those freedoms would in effect be
19 penalized and inhibited. This would allow the government to produce a result which
20 [it] could not command directly. Such interference with constitutional rights is
21 impermissible." *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (quotation omitted);
22 *see also Miller v. United States*, 230 F.2d 486, 490 (5th Cir. 1956).

23 259. Where, as under section 26806, the nonconsensual recording is mandated
24 by government as a condition to exercise an enumerated constitutional right (the right
25 to freely and anonymously speak and associate), California's apparent "constructive
26 consent" argument (that citizens give "consent" by entering a facility marked
27 "conspicuously" with a "recording" notice) collapses.

Supplemental Allegations Since the Filing of the Complaint

260. As noted, many FFLs went out of business or ceased the portion of their business that included sales of firearms, in lieu of complying with SB 1384's costly and draconian recording mandates. This cessation of sales included one of the highest volume dealers in California, Big 5 Sporting Goods.

261. Plaintiffs, including Adam Richards, have spent thousands to tens of thousands of dollars to install compliant audio/video recording equipment simply to remain in business after January 1, 2024.

262. Members of associational Plaintiffs, including Matthew Gene Peterson-Haywood and Turner's Outdoorsman, have spent thousands to tens of thousands of dollars to install compliant audio/video recording equipment simply to remain in business after January 1, 2024. *See, e.g.*, Decl. of Matthew Gene Peterson-Haywood in Supp. of Mot. for Prelim. Inj., ECF No. 27-1, ¶¶ 8-11. For member Peterson-Haywood, the cost to stay in business was equivalent to most of his annual income from this licensed business. *See id.*, ¶ 11.

263. Some Plaintiffs, including members of associational Plaintiffs, have been unable to afford the mandate, and as a result, have stopped dealing in firearms since the beginning of 2024.

264. Although Defendants have claimed that they do not intend to enforce the requirements of SB 1384 as to dealers conducting transactions at gun shows, nonetheless, none of these promises are legally binding, and Defendants refuse to stipulate in a binding manner to such a representation. Because the state recently enacted a law which facially applies to dealers at gun shows, but refuses to enforce it *because this lawsuit attempting to challenge its application to dealers at gun shows is pending*, the voluntary cessation exception to any claim of mootness raised by Defendants applies in this instance. As such, even following the filing of this complaint, a justiciable dispute exists as to whether Defendants can or will seek to impose SB 1384's installation and recording requirements at venues where it is

1 physically impossible for Plaintiffs and their members to comply.

2 **FIRST CAUSE OF ACTION**

3 **Violation of the Right to Free Speech Under U.S. Const. amend. I**

4 **42 U.S.C. § 1983**

5 **(By All Plaintiffs Against All Defendants)**

6 265. Plaintiffs incorporate by reference paragraphs 1 through 264 of this
7 Complaint as though fully set forth herein in their entirety.

8 266. Defendants, acting under color of state law, are enforcing SB 1384, which
9 deprives Plaintiffs of free speech rights secured by the First Amendment of the United
10 States Constitution in violation of 42 U.S.C. § 1983.

11 267. On its face and as applied, section 26806 is an unconstitutional
12 abridgement of Plaintiffs' right to free speech under the First Amendment because it
13 casts such a wide net that it directly prohibits Plaintiffs' pure speech related to the
14 lawful possession and use of lawful firearms without any compelling governmental
15 interest.

16 268. Section 26806 violates virtually every right protected by the First
17 Amendment. The First Amendment to the U.S. Constitution provides that "Congress
18 shall make no law respecting an establishment of religion or prohibiting the free
19 exercise thereof; or abridging the freedom of speech, or of the press; or the right of the
20 people peaceably to assemble, and to petition the government for a redress of
21 grievances." The Fourteenth Amendment incorporates these protections against the
22 states through its Due Process Clause.

23 269. Defendants have no compelling (or even legitimate) governmental interest
24 in recording video and audio of lawful gun owners constantly for the mere hope of
25 catching a criminal somewhere in the thousands of hours of tape. But in reviewing that
26 tape, one would have to review private and confidential matters that the government
27 has no right to.

28 270. Further, section 26806 is neither narrowly tailored to nor the least

1 restrictive means of achieving the state’s dubious interests. Indeed, it sweeps up all
 2 communications—even communications concerning lawful (and constitutionally
 3 protected) products and communications that are private and confidential and have
 4 nothing to do with the process of transactions for the purchase of a firearm.

5 271. Section 26806 is unconstitutionally overbroad because, in an effort to
 6 “catch a criminal,” the law seriously and deliberately burdens a vast amount of speech
 7 that does not constitute such a communication and is fully protected by the First
 8 Amendment.

9 272. As a direct and proximate result of Defendants’ conduct, Plaintiffs have
 10 suffered irreparable harm, including the violation of their constitutional right to free
 11 speech, right to assembly, and right to remain anonymous, entitling them to declaratory
 12 and injunctive relief. Absent intervention by this Court through declaratory and
 13 injunctive relief, Plaintiffs will continue to suffer this irreparable harm.

14 **SECOND CAUSE OF ACTION**

15 **Violation of Government Taking Without Just Compensation**

16 **Under U.S. Const. amend. V**

17 **42 U.S.C. § 1983**

18 **(By All Plaintiffs Against All Defendants)**

19 273. Plaintiffs incorporate by reference paragraphs 1 through 264 of this
 20 Complaint as if fully set forth herein in their entirety.

21 274. The Fifth Amendment to the U.S. Constitution states no private property
 22 shall be taken for public use without just compensation.

23 275. “A property owner may bring a takings claim under § 1983 upon the
 24 taking of his property without just compensation. . . .” *Knick*, 139 S. Ct. at 2179.

25 276. As the Founders recognized uniformly, “the protection of private property
 26 is indispensable to the promotion of individual freedom.” *Cedar Point Nursery v.*
 27 *Hassid*, 141 S. Ct. 2063, 2071 (2021).

28 277. Among the most vital rights of property ownership is the right to exclude

1 others, from private individuals to the government itself. *Cedar Point*, 141 S. Ct. at
2 2072. Indeed, without the right to decide who may enter upon your property and what
3 they may do while there, the right to property does not exist. *See Loretto v.*
4 *Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982) (“the power to
5 exclude has traditionally been considered one of the most treasured strands in an
6 owner’s bundle. . .”).

7 278. Section 26806 imposes upon licensee Plaintiffs a legal obligation to
8 purchase government approved video surveillance systems, and to operate, maintain
9 and store the resulting video and audio recordings, all at the expense of the licensee.

10 279. Section 26806 imposes on licensee plaintiffs a legal obligation to
11 undertake continuous digital video surveillance of their own private property, and to
12 permit government agents to freely enter upon their property to perpetually access and
13 view, at-will, that digital video surveillance. Such surveillance, mandated to be located
14 on the private property of a business owner, or their home where they conduct
15 business, constitutes a permanent physical occupation of their property by the
16 government.

17 280. Such at-will surveillance and viewing impair Plaintiffs’ right to exclude
18 other persons from their property.

19 281. Such at-will surveillance and viewing impair Plaintiffs’ right to freely use
20 their property, free from the prying eyes of the government.

21 282. Such at-will surveillance and viewing authorize the government to
22 possess and use Plaintiffs’ property as it pleases, and impairs Plaintiffs’ right to
23 possess, use, and dispose of their own property as they please, in violation of the Fifth
24 and the Fourteenth Amendments.

25 283. Defendants have failed to compensate Plaintiffs for the permanent
26 physical taking or the permanent easement imposed upon Plaintiffs’ property.

27 284. Section 26806 commandeers private property owners and lessees to
28 implement and then accommodate a sweeping and perpetual government surveillance

1 scheme without any form of compensation for the significant costs incurred or the
2 severe limitations on property rights suffered.

3 285. What is more, once California has its section 26806 recording regime in
4 place (with private industry having done all the legwork), California reserves the right
5 to insert itself into gun dealers' stores and homes for compliance inspections as often
6 as it pleases, at the dealers' cost.

7 286. Section 26806 thus constitutes a permanent, physical, government
8 occupation of numerous portions of (and uses of) Plaintiffs' property where
9 government surveillance equipment must be installed, and additionally for all space
10 upon the property where cameras and audio equipment are pointed and recording.

11 287. As a direct and proximate result of Defendants' conduct, Plaintiffs have
12 suffered irreparable harm, including the violation of a government taking under the
13 law, entitling them to declaratory and injunctive relief. Absent intervention by this
14 Court, through declaratory and injunctive relief, Plaintiffs will continue to suffer this
15 irreparable harm.

16 288. In the alternative, to the extent that Section 26806 does not constitute a
17 physical taking, it is an unconstitutional regulatory taking.

18 **THIRD CAUSE OF ACTION**

19 **Violation of the Right to Privacy Under U.S. Const. amend. IV**

20 **42 U.S.C. § 1983**

21 **(By All Plaintiffs Against All Defendants)**

22 289. Plaintiffs incorporate by reference paragraphs 1 through 264 of this
23 Complaint as if fully set forth herein in their entirety.

24 290. "The right of the people to be secure in their persons, houses, papers, and
25 effects, against unreasonable searches and seizures, shall not be violated, and no
26 Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and
27 particularly describing the place to be searched, and the persons or things to be seized."
28 U.S. Const. amend. IV.

1 291. The Fourth Amendment prohibits unreasonable searches and seizures
2 without a warrant. Generally, law enforcement must obtain a warrant when a search
3 would violate a person's "reasonable expectation of privacy."

4 292. The Fourth Amendment also requires that warrants be supported by
5 probable cause and describe with particularity the places to be searched and persons to
6 be seized.

7 293. Particularly for at-home FFL dealers, the business space is more than just
8 where they conduct transactions; it is where they sleep, eat, go to school, have family
9 gatherings, host holidays, and participate in everyday private activities just like those
10 not running a business in their home.

11 294. In *Katz v. United States*, the Court held that the Fourth Amendment
12 protects people, not places: "What a person knowingly exposes to the public, even in
13 his own home or office, is not a subject of Fourth Amendment protection, but what he
14 seeks to preserve as private, even in an area accessible to the public, may be
15 constitutionally protected." 389 U.S. 347 (1967).

16 295. Section 26806 violates the privacy of the people by intrusion into places
17 and conversations that are meant to remain private from the prying eyes of the
18 government.

19 296. The Fourth Amendment protects not only property interests but certain
20 expectations of privacy as well. *Katz v. United States*, 389 U. S. 347, 351. Thus, when
21 an individual "seeks to preserve something as private," and his expectation of privacy
22 is "one that society is prepared to recognize as reasonable," official intrusion into that
23 sphere generally qualifies as a search and requires a warrant supported by probable
24 cause. *Smith v. Maryland*, 442 U. S. 735, 740 (internal quotation marks and alterations
25 omitted).

26 297. While communicating private information always risks betrayal of
27 confidence by the other party, from a privacy perspective, repeating private
28 information secondhand is quite different from recording the information for potential

1 dissemination to countless recipients. *Smith v. LoanMe, Inc.*, 11 Cal. 5th 183, 200
2 (2021).

3 298. As a direct and proximate result of Defendants' conduct, Plaintiffs have
4 suffered irreparable harm, including the violation of their constitutional right to equal
5 protection under the law, entitling them to declaratory and injunctive relief. Absent
6 intervention by this Court, through declaratory and injunctive relief, Plaintiffs will
7 continue to suffer this irreparable harm.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray for:

10 1. A declaration that SB 1384, codified at California Penal Code section
11 26806, violates Plaintiffs' free speech, anonymity, free association, and assembly
12 rights under the First Amendment to the United States Constitution, on its face and as
13 applied to Plaintiffs;

14 2. A declaration that SB 1384, codified at California Penal Code section
15 26806, enacts an actual or regulatory governmental taking without just compensation
16 in violation of the Fifth Amendment to the United States Constitution, on its face and
17 as applied to Plaintiffs;

18 3. A declaration that SB 1384, codified at California Penal Code section
19 26806, violates the Plaintiffs' right to privacy under the Fourth Amendment to the
20 United States Constitution, on its face and as applied to the Plaintiffs;

21 4. A preliminary and permanent injunction prohibiting all Defendants, their
22 employees, agents, successors in office, and all District Attorneys, County Counsel,
23 and City Attorneys holding office in the state of California, as well as their successors
24 in office, from enforcing SB 1384, codified at Penal Code section 26806;

25 5. Damages pursuant to government taking which would reimburse FFLs for
26 costly systems mandated by the government, payments for technical expertise and
27 installation, and damages for the physical intrusion of permanent structures by the
28 government upon private property;

1 6. An award of costs and expenses, including attorney's fees, pursuant to 42
2 U.S.C. § 1988 or other applicable state or federal law; and

3 7. Any such other relief the Court deems just and equitable.
4

5 Dated: June 28, 2024

MICHEL & ASSOCIATES, P.C.

6 *s/ C.D. Michel*

7 C.D. Michel

8 Attorneys for Plaintiffs Adam Richards,
9 Jeffrey Vandermeulen, Gerald Clark, Jesse
10 Harris, On Target Indoor Shooting Range,
11 LLC, Gaalswyk Enterprises, Inc. (D/B/A
Smokin' Barrel Firearms), Gun Owners of
California, Inc., Gun Owners of America, Inc.,
Gun Owners Foundation, and California Rifle
& Pistol Association, Incorporated

12 Dated: June 28, 2024

LAW OFFICES OF DONALD KILMER, APC

13 *s/ Donald Kilmer*

14 Donald Kilmer

15 Attorney for Plaintiff Second Amendment
16 Foundation
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ATTESTATION OF E-FILED SIGNATURES

I, C.D. Michel, am the ECF User whose ID and password are being used to file this AMENDED AND SUPPLEMENTAL COMPLAINT FOR DECLARATORY & INJUNCTIVE RELIEF. In compliance with Central District of California L.R. 5-4.3.4, I attest that all signatories are registered CM/ECF filers and have concurred in this filing.

Dated: June 28, 2024

s/ C.D. Michel
C.D. Michel

CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case Name: *Richards, et al. v. Newsom, et al.*
Case No.: 8:23-cv-02413 JVS (KESx)

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

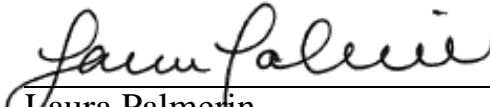
AMENDED AND SUPPLEMENTAL COMPLAINT FOR DECLARATORY & INJUNCTIVE RELIEF

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them:

Todd Grabarsky
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I declare under penalty of perjury that the foregoing is true and correct.

Executed June 28, 2024.


Laura Palmerin